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(The Supreme Court.)

I] JANUARY [1969

THE SUPREME COURT OF INDIA.

(Original Jurisdiction.)

PRESENT :—K. N. WANCHOO, *Chief Justice*, R. S. BACHAWAT, V. RAMASWAMI, G. K. MITTER AND K. S. HEGDE, JJ.

Jagdev Singh and another .. *Petitioners**

v.

The State of Jammu and Kashmir .. *Respondent.*

Defence of India Rules (1962), *Rules* 30 *and* 30-A (9)—*Effect of the rules—Review of detention order under rule* 30-A (9)—*Scope and object—Defective order of review within six months followed by valid order of review after six months—If sufficient for continuance of detention—Power of Government to cancel defective order under Rule* 30-A *and pass a fresh valid order on same facts.*

The effect of rules 30 and 30-A (9) of the Defence of India Rules would be that the detention order passed under rule 30 would be good only for six months and unless there was a review and the detention order was continued the detenue would have to be released. The provisions of rule 30-A are designed to protect the personal liberty of the citizens of this country and that is why that rule provides that every detention order shall be reviewed at an interval of not more than six months. This is a mandatory provision and if it is not complied with and the Government omits to review the detention order within six months the order must fall and the detenue must be released. What applies to an omission to review an order applies equally to a case where a review is not in accordance with law.

Where, therefore, there has been no review under rule 30-A (9) or a review is not in compliance with the provisions of law, the original detention order though it may have been good when it was passed, falls and the detention after the first period of six months becomes illegal.

Thus, where an order of review made within six months was not in accordance with law, the fact that an order of review in accordance with law was made after the expiry of six months would not be sufficient for continuing the detention. For in such a case the original order falls after six months due to want of a proper review and there is nothing to continue thereafter by a proper order of review passed after six months.

A fresh order of detention can be passed on the same facts, if for any reason the earlier order of detention has to be revoked by the Government. There is nothing in the Defence of India Act or the Rules made thereunder which forbids the State Government to cancel one order of detention and pass another in its place. Equally there is nothing in the Act or the Rules which will bar the Government from passing a fresh order of detention on the same facts, in case the earlier order of detention or its continuance is held to be defective for any reason. This is of

* W.P. Nos. 69 and 71 of 1967. 14th August, 1967.

course subject to the fact that the fresh order of detention is not vitiated by *mala fides*.

Now there is no doubt that if the Government resorts to the device of a series of fresh orders after every six months and thus continues the detention of a detenus circumventing the provisions of rule 30-A for review, it would certainly be acting *mala fide*. Such a fresh order would be liable to be struck down, not on the ground that the Government has no power to pass it but on the ground that it is *mala fide* exercise of the power. But if the Government has power to pass a fresh order of detention on the same facts in case where the ealier order or its continuance fails for any defect, there is no reason why the Government cannot pass such fresh order curing that defect In such a case it cannot be said that the fresh order is a *mala fide* order passed to circumvent rule 30-A.

The view taken in *Avtar Singh* v *The State of Jammu and Kashmir*, (1968) M L J. (Crl) 19 (1968) 1 S C.J 168, in so far as it says that no fresh order can be passed even to correct any defect in an order continuing detention under rule 30-A (9) is not correct.

Petition under Article 32 of the Constitution of India for enforcement of the Fundamental Rights.

R. V S Mani, Advocate, *amicus curiae*, for Petitioners (In both the petitions).

R H Dhebar, R Gopalakrishnan and *S. P. Nayar*, Advocates, for Respondent (In both the petitions).

The Judgment of the Court was delivered by

Wanchoo, C J—These two petitions under Article 32 of the Constitution raise common questions of law and will be dealt with together. The petitioners were detained under rule 30 (1)(*b*) of the Defence of India Rules, 1962 (hereinafter referred to as the Rules), under order of the Government of Jammu and Kashmir in March, 1965. Their detention was continued from time to time after review under rule 30-A. One of such reviews was made in February, 1967. At that time the scope of review was governed by judgment dated 1st June, 1965, of Shah, J , (Vacation Judge) in *Sadhu Singh* v. *Delhi Administration*[1] In that case it was held that rule 30-A relating to review did not require a judicial approach to the question of continuance of detention. No opportunity therefore was given to the petitioners to represent their cases when the review was made in February, 1967 and their detention was continued for a further period of six months Then came the judgment of this Court in *P. L. Lakhanpal* v. *The Union of India*[2]. That judgment over-ruled the decision of Shah, J. and held that the function of review under rule 30-A was quasi-judicial and therefore in exercising it, rules of natural justice had to be complied with. In view of this judgment what the respondent did was to hold another review in April, 1967. At that time notice was given to the petitioners and they were given a hearing. Thereafter order was passed in each case on 27th April, 1967 by which the State Government directed the continuance of the detention orders for a further priod. In the meantime the present petitions had been filed on 30th March, 1967 and were based on the judgment of this Court in *Lakhanpal's case*[2].

It is not disputed on behalf of the respondent that *Lakhanpal's case*[2], will apply to the present petitions and the petitioners will be entitled to release because the procedure of a quasi-judicial tribunal was not followed when earlier reviews were made from August, 1965 to February, 1967 Reliance is however placed on behalf of the respondent on the review made in April, 1967 and it is urged that that review was in accordance with the view taken by this Court in *Lakhanpal's case*[2], and therefore continuance of detention thereafter is justified. Further it is urged that even if this contention is not correct the State Government has power to pass a fresh order of detention on the same facts, and even if we allow the present petitions, we should

1. (1966) 1 S C J. 215 : (1966) M.L.J. (Crl.) 153 : (1966) 1 S.C.R. 243.
2. (1968) M.L.J. (Crl.) 183 : (1968) 1 S.C.J. 397.

make it clear that the State Government has such power. It is urged in this connection that the judgment of Bhargava, J, in *Avtar Singh* v. *The State of Jammu and Kashmir*[1], is not correct

The first question therefore is whether the orders of review, dated 27th April, 1967, are sufficient for the continuance of detention, even though the earlier orders of review passed from August, 1965 to February, 1967 were not properly made in view of the judgment of this Court in *Lakhanpal's case*[2]. Reliance in this connection is placed on the judgment of this Court in *A K Gopalan* v. *The Government of India*[3]. In that case it was held that,

> " it is well settled that in dealing with a petition for *habeas corpus* the Court has to see whether the detention on the date on which the application is made is legal if nothing more has intervened between the date of the application and the date of hearing "

So it is urged for the respondent that as the order passed on review under rule 30-A continuing detention on 27th April, 1967 was in accordance with the judgment of *Lakhanpal's case*[2], the earlier orders of review made between August, 1965 and February, 1967 which were improper made no difference.

We cannot accept this contention In *A.K. Gopalan's case*[3], what had happened was that a fresh order was made on 4th March, 1965 and the detention was under that order. The principle laid down in that case is unexceptionable, but the question is whether that principle applies to the facts of the present case In *Gopalan's case*[3], the question that arose was whether the fresh order of 4th March, 1965 under which detention was made was legal, and the Court did not look at the earlier order which had been cancelled by the fresh order of 4th March, 1965 In the present cases however no fresh order was made on 27th April, 1967 and this distinguishes the present cases from *A K. Gopalan's case*[2]. Rule 30-A of the Rules was originally not in the rules and was introduced some time later Before the introduction of rule 30-A the position was that a detention made under rule 30 would be of indefinite duration. But rule 30-A provided for review of detention orders passed under rule 30, and such review was to be made at an interval of not more than six months. On such review the Government had to decide whether detention orders should continue or be cancelled The effect of rule 30 a long with rule 30-A (9) would therefore be that the detention order passed under rule 30 would be good only for six months and unless there was a review and the detention order was continued the detenu would have to be released. We cannot accept the contention on behalf of the respondent that the detention order wold continue even after six months and the detenu may be detained under that order even thereafter without an order under rule 30-A (9), continuing the order of detention It is true that rule 30-A (9) only says that the Government shall decide whether the detention order should be continued or cancelled That however does not mean that if the Government omits to make a review under rule 30-A within six months the detention order will still continue and the detenu continue to be detained thereunder. The provisions in rule 30-A are designed to protect the personal liberty of the citizens of this country and that is why that rule provides that every detention order shall be reviewed at an interval of not more than six months. This is a mandatory provision and if it is not complied with and the Government omits to review the detention order within six months the order must fall and the detenu must be released Of course when the Government actually reviews the order it will either continue that order or cancel that order. That is why rule 30-A (9) says that on review the Government shall decide whether the order should be continued or cancelled. But that does not mean that if for any reason (say, by oversight) the Government omits to review an order within the time provided in the first part of rule 30-A (9), the detention can continue even though there has been no review. What applies to an omission to review an order under rule 30-A

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1. (1968) M.L J (Crl) 19 : (1968) 1 S C J 397.
2. (1968) M.L J. (Crl.) 183 : (1968) 1 S C J. 168.
3. (1966) 2 S C R. 427

(9) applies equally to a case where a review is not in accordance with law as held by this Court in *Lakhanpal's case*[1] Where therefore, there has been no review under rule 30-A (9) or a review is not in compliance with the provisions thereof, as explained in *Lakhanpal's case*[1], the result is that the original detention order though it may have been good when it was passed, falls and the detention after the first period of six months becomes illegal. Further if there is no review of the detention order in the manner provided by law, as explained in *Lakhanpal's case*[1], the original order falls after six months and there is nothing to continue thereafter. In the present cases the orders were passed in March, 1965 and should have been reviewed after every six months in the manner explained in *Lakhanpal's case*[1] That admittedly was not done upto February, 1967, though a number of reviews were made in between. Consequently orders of detention passed in March, 1965 fell after six months and there were no orders to continue thereafter When therefore the State Government ordered the continuance of detention orders on review on 27th April, 1967, in accordance with the procedure indicated in *Lakhanpal's case*[1], there was no order to be continued because in-between the reviews were not proper and the detention had become illegal In these circumstances, the principle laid down in *A K. Gopalan's case*[2], cannot apply to the facts of the present cases, for we cannot ignore that between September, 1965 and April, 1967 there was no proper review as required by rule 30-A (9) and the detention for all that period was illegal and could not be saved by the original order of March, 1965 which must be deemed to have come to an end after six months, in the absence of a proper review under rule 30-A (9). So there was no order which could be continued on April, 1967, and therefore the petitioners would be entitled to release on that ground

This brings us to the next question, namely, whether it is open to the State Government to pass a fresh order in the circumstances of the present cases In this connection reliance is placed on behalf of the respondent on two cases of this Court *Ujagar Singh* v *The State of Punjab*[3], and *Godavari Shamrao Parulekar* v *State of Maharashtra and others*[4] The first case was under the Preventive Detention Act (IV of 1950). In that case it was held that,

> "If the authority making an order is satisfied that the ground on which a detenu was detained on a former occasion is still available and that there was need for detention on its basis no *mala fide* can be attributed to the authority from the fact that the ground alleged for the second detention is the same as that of the first detention."

In the latter case what had happened was that detenues were first detained under the Preventive Detention Act. Later that order was revoked and they were detained under rule 30 of the Rules, and the order was served in jail The second order of detention was apparently based on the same facts on which the first order of detention was passed. This Court held that the second order of detention was prefectly valid and its service in jail did not make the detention illegal.

These cases certainly show that a fresh order of detention can be passed on the same facts, if for any reason the earlier order of detention has to be revoked by the Government. Further we do not find anything in the Defence of India Act (hereinafter referred to as the Act) and the Rules which forbids the State Government to cancel one order of detention and pass another in its place Equally we do not find anything in the Act or the Rules which will bar the Government from passing a fresh order of detention on the same facts, in case the earlier order of detention or its continuance is held to be defective for any reason This is of course subject to the fact that the fresh order of detention is not vitiated by *mala fides*. So normally a fresh order of detention can be passed on the same facts provided it is not *mala fide*, if for any reason the previous order of detention or its continuance is not legal on account of some technical defect as in the present cases

1. (1968) M L J (Crl) 183. (1968) 1 S C J 397.
2. (1966) 2 S C R 427
3. (1952) S.C.J. 521. (1952) 2 M L J. 641: (1952) 2 S C R 756
4. (1964) 6 S C R 446 (1965) 2 S C J 523: (1965) M L J (Crl) 765.

This brings us to the consideration of the judgment of our brother Bhargava, J., in *Avtar Singh's case*[1], to which we have already referred. Our learned brother held that where the original order of detention, as in these cases, was a good order for the first period of six months, it would not be open to the State Government to pass a fresh order of detention on the same facts after cancelling the order on the expiry of six months, for that would be going round the provisions of rule 30-A and that the only way in which detention could be continued after the first period of six months, where a good order was originally passed, was to make a review in a proper manner as indicated in the case of *Lakhanpal*[2]. Our learned brother also seems to have held that if a review was not made in a proper manner as indicated in *Lakhanpal's case*[2], the Government would be completely powerless and could not detain the persons concerned by a fresh order. In effect therefore our learned brother held that if a mistake is made by Government in the matter of review it could not correct it and the detenue must go free.

Now there is no doubt that if the Government resorts to the device of a series of fresh orders after every six months and thus continues the detention of a detenu, circumventing the provisions of rule 30-A for review, which, as interpreted by this Court in *Lakhanpal's case*[2], give some protection to the citizens of this country, it would certainly be acting *mala fide* Such a fresh order would be liable to be struck down, not on the ground that the Government has no power to pass it but on the ground that it is *mala fide* exercise of the power But if the Government has power to pass a fresh order of detention on the same facts in case where the earlier order or its continuance fails for any defect we cannot see why the Government cannot pass such fresh order curing that defect In such a case it cannot be said that the fresh order is a *mala fide* order passed to circumvent Rule 30-A. Take the present case itself The Government passed the original order of detention in March, 1965. That order was good for six months and thereafter it could only continue under rule 30-A on orders passed under rule 30-A (9) The Government did pass orders under rule 30-A (9) and we cannot say in view of the judgment in *Sadhu Singh's case*[3], that the Government went wrong in the procedure for review It was only after the judgment of this Court in *Lakhanpal's case*[2], that the manner of review became open to objection, with the result that the continuance of the order in these two cases failed and the detention became illegal If in these circumstances the Government passes a fresh order under rule 30, it cannot be said that it is doing so *mala fide* in order to circumvent rule 30-A (9) In actual fact the Government had complied with the provisions of rule 30-A (9) and what it did was in accordance with the judgment of this Court in *Sadhu Singh's case*[3]. It is true that after *Lakhanpal's case*[1], the manner in which the review was made became defective and therefore the continuation of detention became illegal Even so, if the Government decides to pass a fresh order in order to cure the defect which has now appeared in view of the judgment of this Court in *Lakhanpal's case*[2], it would in our view be not right to say that the Government cannot do so because that would be circumventing rule 30-A We do not think that we should deprive the Government of this power of correcting a defect particularly in the context of emergency legislation like the Act and the Rules. The Courts have always the power to strike down an order passed in *mala fide* exercise of power, and we agree with Bhargava J, to this extent ahat if the Government, instead of following the procedure under rule 30-A as now laid down in *Lakhanpal's case*[2], wants to circumvent that provision by passing fresh orders of detention on the same facts every six months, it will be acting *mala fide* and the Court will have the power to strike down such *mala fide* exercise of power. But in cases, like the present, where the continuance became defective after the Judgment of this Court in *Lakhanpal's case*[2], we can see no reason to deny power to Government to rectify the defect by passing a fresh order of detention. Such an order in such circumstances cannot be called *mala fide*, and if the Government has

1. (1968) M L J (Cr.) 19 (1968) 1 S.C J. 397
2. (1968) M.L J (Crl) 183 · (1968) 1 S C J. 153
3. (1966) 1 S C J 215 : (1966) M.L J (Crl) 168. : (1966) 1 S.C.R. 243.

the power to pass it—which it undoubtedly has, for there is no bar to a fresh order under the Act or the Rules—there is no reason why such a power should be denied to Government so that it can never correct a mistake or defect in the order once passed or in the continuation order once made We are therefore of opinion that the view taken in *Avtar Singh's case*[1], in so far as it says that no fresh order can be passed even to correct any defect in an order continuing detention under rule 30-A (9) is not correct

We, therefore, allow the writ petitions and order the release of the petitioners But it will be open to the State Government to pass a fresh order of detention if it considers such a course necessary.

V.K. *Petition allowed.*

THE SUPREME COURT OF INDIA.

(Civil Appellate Jurisdiction)

PRESENT :—J C. SHAH, V RAMASWAMI AND G. K. MITTER, JJ.

Kollipara Sriramulu (dead) by his legal representative .. *Appellant**

v.

T. Aswatha Narayana (dead) by his legal representatives and others .. *Respondents.*

Practice—Evidence—Civil Proceedings—Fact that witness is cousin brother of party—Not sufficient to discard his evidence.

Contract Act (IX of 1872), *section* 2 (*h*)—*Oral agreement for sale—If becomes ineffective because parties contemplated the execution of a formal document or because the mode of payment of the price was not agreed upon*

The fact that a witness is the cousin brother of a party to the suit can be no ground in itself for rejecting his testimony

It is well-established that a mere reference to a future formal contract will not prevent a binding bargain between the parties The fact that the parties refer to the preparation of an agreement by which the terms agreed upon are to be put in a more formal shape does not prevent the existence of a binding contract. There are, however, cases where the reference to a future contract is made in such terms as to show that the parties did not intend to be bound until a formal contract is signed The question depends upon the intention of the parties and the special circumstances of each particular case The fact of a subsequent agreement being prepared may be evidence that the previous negotiation did not amount to a concluded agreement, but the mere fact that persons wish to have a formal agreement drawn up does not establish the proposition that they cannot be bound by a previous agreement.

Similarly, the mere omission to settle the mode of payment of the price does not affect the completeness of an oral agreement for sale, when the vital terms of the contract like the price, the area of the land to be sold and the time for completion of the sale are all fixed

Appeals from the Judgment and Decree dated the 25th March, 1960 of the Andhra Pradesh High Court in A.S Nos 380 and 381 of 1956.

H R Gokhale, Senior Advocate, (*K. Jayaram*, Advocate, with him), for Appellant (In both the Appeals).

S T Desai, Senior Advocate (*P Parameswara Rao* and *R. V. Pillai*, Advocates, with him), for Respondents (In both the Appeals)

The Judgment of the Court was delivered by

Ramaswami, J —The appellant in both the appeals was one of the partners in a firm consisting of about thirty partners which was running a mill named ' Vasavamba

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1. (1968) M L.J (Crl) 19· (1968) 1 S.C J. 168.

* C As. Nos 427 and 428 of 1963. 4th March, 1968.

Oil and Rice Mill' at Vijayawada The partnership firm owned not only a factory but also a site of the extent of about 3,845 square yards. The total number of shares in the partnership was 160 out of which the appellant owned 23 shares. By a document dated 15th April, 1940, the firm executed a lease in favour of the 1st respondent and another person of the area of the site for a period of 10 years The lessee was permitted to construct a building for the use of a cinema theatre. The annual rent was Rs. 750 In the year 1948, the appellant filed O S No 196 of 1948 in the Subordinate Judge's Court, Vijayawada, for dissolution of the partnership and for accounts On 20th December, 1951 a preliminary decree was granted in that suit. The first respondent was added as 17th defendant in that suit He contended in that suit that the managing partner of the firm had covenanted to sell to him the site leased out and that in any event he was not liable to eviction in view of the provisions of the Madras Buildings (Lease and Rent Control) Act In 1950, before the passing of the preliminary decree, a suit was filed in the District Munsiff's Court, Vijayawada—O S No 440 of 1950 by the firm and its managing partner against the 1st respondent and others seeking to evict the 1st respondent On 20th December, 1951 a preliminary decree was passed in O S No. 196 of 1948 but it was made subject to the rights of the 1st respondent and without prejudice to his contentions. There was a direction in the preliminary decree to sell the properties of the partnership firm and a receiver was appointed for that purpose. On 17th February, 1952 the appellant was transposed as the 3rd plaintiff in O S. No 440 of 1950 in the District Munsiff's Court, Vijayawada. As the appellant had by then purchased 39 shares from some of the partners in addition to the 23 shares already owned by him, he claimed partition and separate possession of 62 shares belonging to him in the said suit. To obtain this relief he applied for an amendment of the plaint which was allowed. By reason of the said amendment the District Munsiff ceased to have jurisdiction over the suit and therefore he directed the return of the plaint for presentation to the Subordinate Judge's Court. The plaint was therefore filed in the Subordinate Judge's Court, Vijayawada and numbered as O S No. 203 of 1954. While this litigation was going on the 1st respondent who had built a cinema theatre on the site was actively trying to purchase the site from the co-sharers. He filed O S. No. 124 of 1953 in the Subordinate Judge's Court alleging that all the partners of the firm except the appellant had entered into an oral agreement with him on 6th July, 1952 to sell 137 shares in the site and that in pursuance of the agreement partners who owned 98 shares had executed sale deeds in his favour and the other partners owning 39 shares did not do so. The 1st respondent therefore claimed specific performance of the agreement to sell 39 shares owned by the said partners and contended that sale of those shares in favour of the appellant was not binding upon him. The suit was transferred to the District Court of Masulipatam and was numbered as O S. No. 1 of 1956 The suit referred to earlier in which the appellant claimed partition and recovery of possession of his 62 shares was also finally transferred to the District Court of Masulipatam and numbered as O.S No. 2 of 1956. As the main dispute in both the suits was common, namely, whether the appellant was entitled to the 39 shares purchased by him from the partners owning them or whether by reason of the prior oral agreement the 1st respondent was entitled to a conveyance in respect of the shares. It was agreed between the parties that evidence should be taken in both the suits together and what was evidence in the one suit should be treated as evidence in the other suit. By his judgment dated 28th February, 1956, the District Judge held that the 1st respondent had not proved, the oral agreement of sale in his favour alleged to have taken place on 6th July, 1952. He therefore dismissed the suit for specific performance O S No. 1 of 1956. For the same reasons he held that in the suit for partition namely, O S. No. 2 of 1956 the appellant was entitled to 62 shares and he granted a decree for partition and possession thereof as also damages at the rate of Rs 2,000 per annum from 1st May, 1950 to the date of the delivery of possession of his shares The 1st respondent took the matter in appeal before the High Court of Andhra Pradesh—A S No. 380 of 1956 against O.S. No. 1 of 1956 and A.S. No. 381 of 1956 against O.S. No.2 of 1956. By a common judgment dated 25th March, 1960, the High Court allowed

both the appeals It was held by the High Court that the oral agreement pleaded by the 1st respondent was true and that the appellant was not a *bona fide* purchaser for value without notice. The High Court accordingly drecreed the suit for specific performance The decree in the partition suit O.S. No. 2 of 1956 was therefore varied The appellant's share was fixed at 23/160th. A direction was also given by the High Court that in the actual partition, as far as possible, the lower Court should allow to respondent No. 1 that portion of the site on which the cinema theatre building constructed by him stood and if that was not possible, the trial Court may follow the procedure indicated in *Rama Prasada Rao* v *Subbaramaiah*[1]

The first question to be considered in these appeals is whther there was an oral agreement between the 1st respondent and all the partners of the firm except the appellant for sale of their shares on 6th July, 1952, and whether respondent No 1 was entitled to specific performance of that oral agreement. It was the case of respondent No. 1 that on 6th July, 1952 there was a meeting of all the male partners at the house of Desu Virabhadrayya and at that meeting there was an agreement reached between all of them (except the appellant) and himself that they should sell to him their shares (and the shares of those whom they represented) at the rate of Rs. 3,375 for eight shares. A written agreement was to be drawn in 2 or 3 days and the mode of payment of the purchase money was also to be settled later. It was further agreed that the sale deeds were to be executed in three months In pursuance of the agreement all the co-sharers except defendants 1 to 9 executed sale deeds and the plaintiff therefore became the owner of 98 shares The first witness in proof of the oral agreement was respondent No 1 himself. He deposed that P.Ws 5, 6 and 8, Sri Devata Rama Mohana Rao, Sri Addepalli Nageswara Rao and Sri Thoomu Srimannarayana respectively were present at the meeting of the shareholders. He also said that the first defendant, the son of the 2nd defendant, was there to represent the latter, and that Gopala Krishnaiah, son of the 3rd defendant, and the 7th defendant (who represents the 5th and 6th defendants) and Alavala Subbayya (husband of the 8th defendant and father of the 9th defendant) were present when the agreement was settled. He added that the sale deed was to be executed in three months and that draft agreement, Exhibit A-6 was also prepared 2 or 3 days later. On behalf of the appellant reference was made to Exhibit B-1, the deposition of the first respondent in the previous suit, where he said that the agreement was on 1st July, 1952 and that he did not remember the names of the other persons present at the meeting except P W. 8, Sri Subba Rao Nayudu, Vice-President of Andhra Bank. In our opinion, the discrepancy is immaterial and the High Court was right in accepting the evidence of this witness as true. The evidence of respondent No. 1 is corroborated by P W. 7 who said that except the women shareholders all other shareholders were persent at the meeting of 6th July, 1952 and the subject for consideration was the sale of the site of the cinema theatre to respondent No 1. He added that the price of the whole site was fixed at Rs. 67,500 and that all the partners except the appellant agreed to sell away their shares. On behalf of the appellant reference was made to the counter affidavit, B-4 dated 5th January, 1953, filed in interlocutory proceedings on behalf of P.W. 7, but there is no serious contradiction between the evidence of that witness in Exhibit B-4 and the evidence of P W. 7 in the present suit. The High Court was highly impressed with the evidence of P.W. 7 and we see no reason for taking a different view in regard to the credibility of this witness. P.W. 8 was also present at the meeting on 6th July, 1952. His evidence corroborates that of respondent No. 1. He said that the son of the appellant was present at the meeting and the women shareholders were represented by some men on their behalf. It is true that P.W. 8 is the cousin brother of respondent No. 1, but this can be no ground in itself for rejecting his testimony. P Ws 2 and 3 have also given important corroborative evidence. P W. 2, Sri D. Subba Rao is the Subordinate Judge of Bapatla. He deposed that the first respondent told him that there was an oral agreement for the purchase of the shares concluded in the first week of July, 1952. Exhibit A-22 dated 9th July, 1952, a letter written by P.W. 2

1. (1957) 2 An.W.R. 488.

to respondent No 1 supports the evidence of P W 2 P.W 3, Sri S Narayana Rao, a District Judge and a family friend of respondent No. 1 also testified that he was informed of the negotiations by the first respondent for purchasing the shares and he was also told by the first respondent about the conclusion of the agreement Exhibit A-26 dated 14th July, 1952, a letter written by him to the first respondent, support this evidence. P.Ws 2 and 3 are highly respectable witnesses and the High Court was right in taking the view that their evidence strongly corroborates the case of respondent No. 1 with regard to the conclusion of the oral agreement for sale on 6th July, 1952. The evidence of respondent No 1 is also corroborated by the evidence of P.Ws. 5 and 6, Sri Devata Rama Mohana Rao and Sri Addepalli Nageswara Rao which has been believed by the High Court On behalf of the appellant it was said that respondent No 1 has not given any reason in the plaint or in the evidence as to why a written agreement was not entered into There may be some force in this argument. But no such question was put to P W 1 in cross-examination, nor was he asked to give any explanation On the other hand, there are important circumsstances indicating that the case of the first respondent with regard to the oral agreement is highly probable In the first place, respondent No 1 had built a valuable cinema theatre building on the disputed site and he had very strong reasons to make an outright purchase of the site, otherwise he would be placed in a precarious legal position Negotiations for purchase were going on for several years past and considering this background, the case of the first respondent with regard to the oral agreement appears highly probable. P W. 2, a Subordinate Judge and P.W 3, a District Judge, have both given evidence which corroborates the case of respondent No 1 with regard to the conclusion of the oral agreement on 6th July, 1952 and there is no reason suggested on behalf of the appellant for discarding their evidence. It is also important to notice that 20 out of 30 shareholders executed sale deeds in favour of the first respondent after the date of the alleged oral agreement on 6th July, 1952. The fact that the shareholders sold their shares at the identical price to the first respondent and the others sold at the same price to the appellant is only explicable on the hypothesis that the price was fixed by agreement between all the shareholders willing to sell *i e.*, all those other than the appellant. The last of the sale deeds executed in favour of the appellant or the first respondent are Exhibit A-11 and A-12 dated 28th February, 1953 There is evidence that prices were rising meanwhile and therefore the circumstance that the vendors chose to sell at the same price renders it highly probable and that there was an earlier binding agreeement. It is also an important circumstance against the appellant that none of the women shareholders has appeared in the witness box to rebut the evidence tendered on behalf of respondent No. 1. There was evidence given on behalf of respondent No. 1 that the women partners had authorised the men partners to represent them at the meeting but none of the women partners entered the witness box to deny such authorisation. On behalf of the appellant reliance was placed upon the circular letter, Exhibit A-15 purported to be written by one Gopi Setti Venkata Subba Rao, one of the shareholders. The document is not signed by respondent No. 1. It appears to be a notice prepared by one of the shareholders to be circulated *inter se* among them and refers to the mode of payment of the purchase money agreed to between respondent No. 1 and the persons selling the shares. The High Court has observed that there is nothing in this document which militates against the case of respondent No. 1 and we see no reason to take a different view as regards the effect of Exhibit A-15.

We proceed to consider the next question raised in these appeals, namely whether the oral agreement was ineffective because the parties contemplated the execution of a formal document or because the mode of payment of the purchase money was not actually agreed upon It was submitted on behalf of the appellant that there was no contract because the sale was conditional upon a regular agreement being executed and no such agreement was executed. We do not accept this argument as correct. It is well-established that a mere reference to a future formal contract will not prevent a binding bargain between the parties. The fact that the parties refer to the preparation of an agreement by which the terms agreed upon are

to be put in a more formal shape does not prevent the existence of a binding contract. There are, however, cases where the reference to a future contract is made in such terms as to show that the parties did not intend to be bound until a formal contract is signed The question depends upon the intention of the parties and the special circumstances of each particular case As observed by the Lord Chancellor (Lord Cranworth) in *Ridgway* v *Wharton*[1], the fact of a subsequent agreement being prepared may be evidence that the previous negotiation did not amount to a concluded agreement, but the mere fact that persons wish to have a formal agreement drawn up does not establish the proposition that they cannot be bound by a previous agreement. In *Von Hatzfeldt-Wildenburg* v *Alexander*[2], it was stated by Parker, J , as follows:

> " It appears to be well settled by the authorities that if the documents or letters relied on as constituting a contract contemplate the execution of a further contract between the parties, it is a question of construction whether the execution of the further contract is a condition or term of the bargain or whether it is a mere expression of the desire of the parties as to the manner in which the transaction already agreed to will in fact go through In the former case there is no enforceable contract either because the condition is unfulfilled or because the law does not recognize a contract to enter into a contract. In the latter case there is a binding contract and the reference to the more formal document may be ignored."

In other words, there may be a case where the signing of a further formal agreement is made a condition or term of the bargain, and if the formal agreement is not approved and signed there is no concluded contract In *Rossiter* v *Miller*[3], Lord Cairns said .

> " If you find not an unqualified acceptance subject to the condition that an agreement is to be prepared and agreed upon between the parties, and until that condition is fulfilled no contract is to arise then you cannot find a concluded contract."

In *Currimbhoy and Company Ltd* v *Creet*[4], the Judicial Committee expressed the view that the principle of the English law which is summarised in the judgment of Parker, J , in *Von Hatzfeldt-Wildenburg* v *Alexander*[2], was applicable in India. The question in the present appeals is whether the execution of a formal agreement was intended to be a condition of the bargain dated 6th July, 1952, or whether it was a mere expression of the desire of the parties for a formal agreement which can be ignored The evidence adduced on behalf of respondent No 1 does not show that the drawing up of a written agreement was a pre-requisite to the coming into effect of the oral agreement It is therefore not possible to accept the contention of the appellant that the oral agreement was ineffective in law because there is no execution of any formal written document. As regards the other point, it is true that there is no specific agreement with regard to the mode of payment but this does not necessarily make the agreement ineffective The mere omission to settle the mode of payment does not affect the completeness of the contract because the vital terms of the contract like the price and area of the land and the time for completion of the sale were all fixed We accordingly hold that Mr. Gokhale is unable to make good his argument on this aspect of the case

We shall next deal with the question whether the appellant was a *bona fide* purchaser for value without notice of the prior oral agreement The first sale deed obtained by the appellant was on 26th July, 1952. P W. 2 stated in his evidence that the appellant told him that he had been aware of the agreement in favour of respondent No 1 at the time of the purchases under Exhibit B-6 to B-10 It is true that P W 2 added that the appellant did not say distinctly that he was aware of the agreement between the respondent and defendants 1 to 9 Upon this point the appellant himself was unable to remember whether he had told P W. 2 to that effect. In any case, P Ws 5 and 6 deposed that they went to the appellant on 7th July,

1. 6 H L C 238, 263.
2. L.R. (1912) 1 Ch. 284, 288.
3. 3 A C 1124
4. (1933) L.R. 60 I.A. 297 : 64 M.L.J. 103.

1952, and asked him to part with his shares in favour of respondent No. 1 It is not denied by the appellant that he met P Ws 5 and 6 on 7th July, 1952 It is also significant that the purchase money paid by the appellant was very nearly the same as that payable under the agreement in respondent No 1's favour. On the basis of this evidence the High Court reached the conclusion that the appellant had notice of the prior oral agreement We see no reason to differ from the finding of the High Court on this point.

It was finally contended that the High Court ought not to have given any direction that as far as possible the site upon which the cinema building stands should be allotted to the share if respondent No 1 if it is comprised within the 137 shares to which he was entitled It was stated on behalf of the appellant that there was no equity in favour of respondent No 1 as he was a lessee for 10 years and all the constructions were made with the full knowledge that he was a lessee for a limited period. In any case, it was said that the appellant should have been given permission under section 3 of the Partition Act (Partition Act IV of 1893) when respondent No 1 himself invoked the provisions of section 2 of that Act It was also argued that the High Court had no jurisdiction to modify any portion of the judgment dated 25th March, 1960, by a subsequent order dated 21st June, 1960, without an application for review In our opinion, the contention put forward on behalf of the appellant is well-founded and since no application was made on behalf of the first respondent under section 2 of the Partition Act we are of opinion that the following direction of the High Court in the preliminary decree should be deleted .

"(7) That the lower Court shall as far as possible allot to the appellant the site upon which the appellants' buildings stand and further direct that if that procedure cannot be adopted conveniently or equitably the procedure laid down in the judgment reported in *Rama Prosada Rao* v *Subbaramaiah*[1] be followed.

It will, of course, be open to the parties to make representations and for the High Court to give equitable directions in the allotment of shares to be made in the final partition decree.

Subject to this modification, we affirm the judgment and decree of the High Court of Andhra Pradesh in A S Nos 380 and 381 of 1956 dated 25th March, 1960, and dismiss these appeals with costs—there will be one hearing fee

V K. *Order accordingly.*

THE SUPREME COURT OF INDIA.

(Civil Appellate Jurisdiction.)

PRESENT .—J C. SHAH, V RAMASWAMI AND G. K. MITTER, JJ.

P.S.L. Ramanathan Chettiar and others .. *Appellants**

v.

O.R M P.R.M. Ramanathan Chettiar . *Respondent.*

Madras Agriculturists Relief Act (IV of 1938) as amended by Madras Act (XXIII of 1948), sections 3 (iii) and 19 (2)—'Debt'—Meaning of—Deposit with a banker before the coming into force of the Act—Demand for repayment after commencement of the Act—Decree obtained in suit filed thereafter—If can be scaled down under section 19 (2)—Deposit of decretal amount pending appeal from decree, to obtain stay of execution of decree—If amounts to satisfaction of decree for the purpose of section 16 (iii) of Madras Act (XXIII of 1948)—If interest ceases from date of such deposit

The definition of 'debt' in section 3 (*iii*) of the Madras Agriculturists Relief Act is of a very wide import and would include any liability due from an agriculturist with the exceptions specified

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1. (1957) 2 An W.R. 488

*C.A. No. 462 of 1965. 4th March, 1968.

In *Kesoram Industries* v *Commissioner of Wealth-tax*, (1966) I T J. 277. (1966) 1 S.C J. 312: (1966) 2 S.C R 688 the Supreme Court held that the word 'debt' could be defined as a liability to pay *in praesenti* or *in futuro* an ascertainable sum of money.

There can be no doubt therefore that on a deposit being made the depositee incurs a liability although the time for repayment would come only when a demand is made and the cause of action for the suit would arise on such a demand.

The argument that the word 'debt' in section 3 (*iii*) implies a pre-existing loan and as such it could not apply to a deposit, is untenable. The definition in section 3 (*iii*) clearly negatives such a proposition If loans alone were meant to be covered by the use of the word 'debt', there was no reason to exclude rent from the purview of the expression

It would follow that a deposit made with a banker before the coming into force of the Madras Act IV of 1938 would be a 'debt' payable at the commencement of the Act although no demand for its repayment was made before the coming into force of the Act. A decree obtained in a suit filed after the coming into force of the Act in respect of such a debt could therefore be scaled down under section 19 (2) of the Act.

The fact that during the pendency of an appeal from a decree the full amount of the decree had been put into Court before 1948, to obtain stay of execution of the decree would not mean that the decree had been satisfied before the commencement of the Madras Act (XXIII of 1948) as to preclude the judgment-debtor from applying for scaling down of the decree thereafter.

The fact of a judgment-debtor's depositing a sum in Court to purchase peace by way of stay of execution of the decree on terms that the decree-holder can draw it out on furnishing security, does not pass title to the money to the decree-holder He can if he likes take the money out in terms of the order; but so long as he does not do it, there is nothing to prevent the judgment-debtor from taking it out by furnishing other security, say of immovable property, if the Court allows him to do so as on his losing the appeal putting the decretal amount in Court in terms of order 21, rule 1, Civil Procedure Code, in satisfaction of the decree.

In such a case, as the deposit by the judgment debtor is not in terms of Order 21, rule 1, Civil Procedure Code, there is no question of stoppage of interest after the deposit.

Appeal by Special Leave from the Judgment and Order dated the 8th August, 1959 of the Madras High Court in A A O. No 171 of 1953†.

M. S. K. Sastri and *M. S. Narasimhan*, Advocates, for Appellants.

R. Thiagarajan, Advocate, for Respondent.

The Judgment of the Court was delivered by

Mitter, J.—This is an appeal by Special Leave against an order of the High Court of Madras dated 8th August, 1959 †reversing an order of the Subordinate Judge, Devakottai scaling down the decree passed in O S No. 33 of 1945

The facts necessary for the disposal of the appeal are as follows. The respondent's father made a deposit of Rs. 5,000 with the appellants' father in 1926 repayable with interest at Rangoon Nadappu rate A demand was made for re-payment on 1944 and a suit for recovery of the amount was filed on 16th March, 1945 The trial Court decreed the suit in the year 1946 for Rs. 11,459-14-0. The appellants' father preferred an appeal therefrom to the High Court and pending disposal of the same deposited Rs 3,500 in Court on 16th April, 1947 The High Court confirmed the decree on 14th September, 1951 There is some dispute about the actual date but there is no contest that the appellant's father deposited Rs 11,098-10-2 to obtain stay of execution of the decree. On 20th August, 1947 the Court passed an order

† (1960) 1 M L J. 1: I L R. 1960 Mad 97.

to the effect that the decree-holder would be allowed to draw out the amount on furnishing security Although an Act styled The Madras Agriculturists Relief Act, 1938, was passed on 22nd of March of that year wherein provision was made for giving, relief to agriculturist debtors, *inter alia*, by scaling down decrees passed against them no attempt was made by the defendants to take advantage thereof either in the trial Court or before the Court of Appeal On execution proceedings being commenced, the judgment-debtors filed an application under the aforesaid Act for scaling down the decree under section 19 (2) thereof The decree-holder raised various objections thereto. The Subordinate Judge who heard the application in the first instance turned down the contentions of the decree-ohlder and modified the decree. An appeal therefrom was preferred by the decree-holder to the Madras High Court. There being conflicting decisions in the High Court as to whether a judgment-debtor who had not claimed relief under the Act before the passing of the decree, could do so subsequently thereto, the appeal was directed to be heard by a Full Bench An appeal from another decision of the same High Court embracing the identical question was disposed of by this Court in *Narayanan Chettiar* v *Annamalai Chettiar*[1] Thereafter referring to the Act of 1938 as also to section 16 of Madras Act (XXIII of 1948) amending the Act of 1938, it was held that ' the appellant was entitled to the benefit of section 19 (2) of the Act read with section 16, clause (*ii*), of the Amending Act."

The Full Bench of the Madras High Court constituted for the purpose of hearing the appeal from the order of the Subordinate Judge held that the lower Court was competent to give relief under section 19 (2) of the Act by way of scaling down the decree passed by the High Court, and referred the matter back for decision by a Bench. The Bench decided *inter alia* that the application wa s properly presented before the Subordinate Judge *i e*, the Court which passed the decree. It refused to go into the question as to whether the plaintiff was an agriculturist in view of the concession before the Full Bench It further negatived the plea that the decree had become satisfied by payment of money into Court on 24th July, 1947 It however reversed the order of the Subordinate Judge by holding that the money entrusted to the plaintiff's father being a deposit with a banker was not payable until there was a demand for it the money became payable only on 2nd October, 1944, *i e*, after the coming into force of Act (IV of 1938) and consequently the provisions of section 19 (2) of the Act were not applicable and that the decree was not liable to be scaled down. The present appeal is against this order

Section 19 of the Act which we have to consider is set forth below :

" (1) Where before the commencement of this Act, a Court has passed a decree for the repayment of a debt, it shall, on the application of any judgment-debtor who is an agriculturist or in respect of a Hindu joint family debt, on the application of any member of the family whether or not he is the judgment-debtor or on the application of the decree-holder, apply the provisions of this Act to such decree and shall, notwithstandng anything contained in the Code of Civil Procedure, 1908, amend the decree accordingly or enter satisfaction, as the case may be:

Provided that all payments made or amounts recovered, whether before or after the commencement of this Act, in respect of any such decree shall first be applied in payment of all costs as originally decreed to the creditor.

(2) The provisions of sub-section (1) shall also apply to cases where, after the commencement of this Act, a Court has passed a decree for the repayment of a debt payable at such commencement "

' Debt ' has been defined in section 3 (*iii*) of the Act as meaning " any liability in cash or kind, whether secured or unsecured, due from an agriculturist, whether payable under a decree or order of a civil or revenue Court or otherwise, but does not include rent as defined in clause (*iv*), or ' kanartham ' as defined in section 3 (1) (1) of the Malabar Tenancy Act, 1929 "

1 (1959) S C J 788 : (1959) 2 An W R (S C.) 55 : (1959) 2 M L J (S C) 55 (1959) 1 S C.R. (Supp) 237.

It will be noted that the definition is of a very wide import and would include any liability due from an agriculturist with the exceptions specified. Section 4 takes out of the ambit of the definition various liabilities and impositions on the agriculturist expressly specified therein. If therefore there is a liability of an agriculturist not in terms excepted by section 3 (*iii*) or section 4 of the Act it would be a 'debt' within the meaning of the definition given in section 3 (*iii*).

In *Kesoram Industries* v. *Commissioner of Wealth Tax*[1], this Court had to consider the meaning of the expression "debts owed by the assessee" which had to be taken into account in computing his net wealth in terms of section 2 (*m*) of the Wealth Tax Act. One of the questions there raised was, whether the amount of the provision for payment of income-tax and super-tax in respect of a particular year of account was a debt owed within the meaning of section 2 (*m*) and as such deductible in computing the net wealth of the assessee. It was held by this Court that even though the Finance Act may be passed later " the tax liability at the latest will arise on the last day of the accounting year ". The Court went elaborately into the question as to the meaning of the word 'debt' and held that it could be defined as a liability to pay *in praesenti* or *in futuro* an ascertainable sum of money. As regards the meaning of the word 'owed' it was observed that 'it did not really add to the meaning of the word 'debt' "

In the light of this decision there can be no doubt that on a deposit being made, the depositee incurred a liability although the time for repayment would come only when a demand was made and the cause of action for the suit would arise on such a demand.

On behalf of the respondent, it was argued that the word 'debt' implied a pre-existing loan and as such it could not apply to a deposit. The definition in section 3 (*iii*) clearly negatives such a proposition. If loans alone were meant to be covered by the use of the word 'debt', there was no reason to exclude rent from the purview of the expression. In that case there would have been no need to mention expressly revenue tax or cess or liability arising out of a breach of trust or in respect of "maintenance under a decree of Court or otherwise " in section 4.

The plea of the decree-holder which succeeded before the High Court cannot therefore be accepted.

It was however argued that the decree had been satisfied already and as such section 16, clause (*iii*) of Madras Act XXIII of 1948, was applicable. That section for our purpose runs as follows :

" The amendments made by this Act shall apply to the following suits and proceedings, namely :—

(*i*) * * * * *

(*ii*) * * * * *

(*iii*) all suits and proceedings in which the decree or order passed has not been executed or satisfied in full before the commencement of this Act :

* * * * "

It was argued that as the full amount of the decree had been put in Court before 1948, the judgment-debtors could not apply for scaling down thereafter. In this connection, reliance was placed on a decision of the Calcutta High Court in *Chowthmull Maganmull* v. *The Calcutta Wheat and Seeds Association*[2]. There the defendant-appellant had appealed from a decree for Rs. 21,850 with interest and costs passed against it and on the respondents taking steps to execute the decree had obtained an order for stay of execution thereof on depositing the said sum in Court as security to the credit of the suit. Thereafter an order was made adjudicating the appellants as insolvents. The Official Assignee did not proceed with the appeal and the respon-

1. (1966) 2 S.C.R. 688 : (1966) 1 S.C.J. 212 : 59 I.T.R. 767 : (1966) 1 Comp. L.J. 154 : (1966) 1 I.T.J. 277.
2. I.L.R. (1924) 51 Cal. 1010.

dent applied for the appeal being dismissed and the money being paid over to them. The Official Assignee claimed the money as belonging to the insolvents' estate and for the benefit of the general body of creditors It was held that the effect of the order of 29th August, 1923 directing stay of execution on terms of a deposit being made was that " the money was paid into Court to give security to the plaintiff that in the event of their succeeding in the appeal they should obtain the fruits of their success," and the " money which was paid into Court belonged to the party who might be eventually found entitled to the sum " On the other hand, there is a decision of the Bombay High Court in *Keshavlal* v *Chandulal*[1], where a judgment-debtor had obtained an order for stay of execution of the decree on his depositing the decretal amount in Court. Later on the application of the judgment-debtor the deposit was invested in Government promissory notes which appreciated in value by the time the appeal was heard The appeal resulted in a small sum being disallowed from the decree whereupon the judgment-debtor applied for a return of the investment to him on his paying into Court the amount due under the decree But the decree-holder claimed the securities which represented the decretal amount at the time the deposit was made On behalf of the decree-holder reference was made to the above judgment of the Calcutta High Court There distinguishing the Calcutta Judgment, Macklin, J , said that the amount in Court "was primarily a deposit of security rather than a deposit of the decretal debt, and the decree-holder cannot claim it as his own unless the judgment-debtor fails to satisfy the decree by the payment of the money due under the decree "

On principle, it appears to us that the fact of a judgment-debtor's depositing a sum in Court to purchase peace by way of stay of execution of the decree on terms that the decree-holder can draw it out on furnishing security, does not pass title to the money to the decree-holder. He can if he likes take the money out in terms of the order; but so long as he does not do it, there is nothing to prevent the judgment-debtor from taking it out by furnishing other security, say, of immovable property, if the Court allows him to do so and on his losing the appeal putting the decretal amount in Court in terms of Order 21, rule 1, Civil Procedure Code in satisfaction of the decree

The real effect of deposit of money in Court as was done in this case is to put the money beyond the reach of the parties pending the disposal of the appeal The decree-holder could only take it out on furnishing security which means that the payment was not in satisfaction of the decree and the security could be proceeded against by the judgment-debtor in case of his success in the appeal Pending the determination of the same, it was beyond the reach of the judgment-debtor.

The observations in *Chowthmull's case*[2], do not help the respondent. In that case, the appeal was not proceeded with by the Official Assignee. Consequently, the decree-holder could not be deprived of the money which had been put into Court to obtain stay of execution of the decree as but for the order, the decree-holder could have levied execution and obtained satisfaction of the decree even before the disposal of the appeal.

The last contention raised on behalf of the respondent was that at any rate the decree-holder cannot claim any amount by way of interest after the deposit of the money in Court There is no substance in this point because the deposit in this case was not unconditional and the decree-holder was not free to withdraw it whenever he liked even before the disposal of the appeal. In case he wanted to do so, he had to give security in terms of the order The deposit was not in terms of Order 21, rule 1, Civil Procedure Code, and as such, there is no question of the stoppage of interest after the deposit.

In the result, the appeal is allowed, the order of the High Court set aside and that of the Subordinate Judge restored. The respondent will pay the costs of this appeal

V K. ——— *Appeal allowed*

1. (1935) 37 Bom.L.R. 200. 2 I.L.R. (1924) 51 Cal. 1010.

THE SUPREME COURT OF INDIA.

(Civil Appellate Jurisdiction.)

PRESENT :—J. C. SHAH AND G.K. MITTER, JJ.

A.R. Salay Mohamed Sait etc. .. *Appellants**

v

Jaffer Mohamed Sait's Memorial Dispensary Charity and others . *Respondents.*

Madras Buildings (Lease and Rent Control) Act (XIII of 1960), *section* 2 (2)—*Lease of land by landlord with superstructure belonging to lessee—Provisions of the Act if attracted.*

In order to determine whether a lease is of a vacant land or of a ' building ' within the meaning of the Madras Buildings (Lease and Rent Control) Act, 1960, both the form and the substance of the transaction must be taken into account.

If the lease is of vacant land only, and the structures belonged entirely to the lessee the operation of the Act would be excluded. By the mere fact that there were structures on the demised land at the time of the original lease or at the time of renewal of the lease, which do not belong to the lessor, the demise of the land cannot be construed as demise of a building on the ground that the land became an integral part of the building.

Ramaswami Pathar v. *J. K Devasthanam,* (1963) 1 M L J 60, *Palaniappa Chettiar* v. *Vairavan Chettiar,* (1963) 1 M L J. 130: I L.R. (1963) Mad. 519 and *Palaniappa Chettiar* v. *Babu Sahib,* (1964) 1 M L J. 110, Disapproved

In the two leases in the present case neither in form nor in substance was there a letting of any building. In the first case there were some structures on the land at the time of the demise but the landlord had no interest thereon and the tenant unless he made default in payment of rent could remove, at any time within 2 months after the expiry of the lease, the building materials by demolishing the structures. In the second case, although the structures were to become the property of the landlord at the end of the term the letting was only of the vacant land. The landlord did not let out any building which could come within the mischief of the Madras Rent Control Act, 1960.

Krishnapasuba v *Dattareya,* (1966) 1 S C J 601 : A I R. 1966 S C 1024, Followed.

Appeals by Special Leave from a common Judgment of the Madras High Court in Second Appeals Nos 1623 and 1639 of 1963, dated 15th September, 1967.

H. R Gokhale, Senior Advocate, (*R. Theagarajan,* Advocate, with him), for Appellants in both the Appeals.

M. C. Chagla, Senior Advocate, (*N Balasubramania Iyer* and *L R. Gopalakrishnan,* Advocates with him), for Respondents in both the Appeals.

The Judgment of the Court was delivered by

Mitter, J.—These are two appeals by Special Leave from a common judgment in two Second Appeals Nos 1623 and 1639 of 1963, disposed of by the High Court of Judicature at Madras on 15th September, 1967.

The present appeals are by the two defendants in two suits for ejectment filed in the Court of the Subordinate Judge of Nilgris in the year 1960. The Subordinate Judge found against the plaintiff but on appeal the District Judge reversed that finding and the High Court in Second Appeal upheld the District Judge's decision.

The relevant facts are as follows. On 3rd February, 1941, a lease deed was executed between one Abdul Rahiman Dulla Sait (lessee) and one Mohamed Hashim Sait (Lessor) in respect of Ac. 2-00 of land in Goel Mohamed's compound being part of S.No. C-316 for a period of 10 years from 29th January, 1941, with

*C.A. No. 880-881 of 1968. 25th March, 1968.

an option of renewal for a further term of ten years at an annual rent of Rs. 260 excluding water tax and the taxes on the buildings and sheds which had been erected by the lessee at his own cost. The lessee authorised the landlord in case of default in the payment of the yearly rent to confiscate the said building and sheds. It was a further term of the lease that at the expiry thereof the lessee would be at liberty to remove at his own cost all the materials of the buildings and sheds which had been erected on the land within two months from the date of the said expiry The lessee hypothecated the buildings and sheds as security for the payment of the yearly rent. In case of renewal of the lease for another period of 10 years, the lessee was to execute a fresh lease for the said period, the rates and taxes on the land having to be borne by the lessors. It appears that the lessee put up at his own cost and risk a cinema hall and some other buildings over the demised land and enjoyed the same as a lessee In 1945 the lessor created a trust in respect of the demised property and other properties by a deed of trust dated 21st February, 1945, and appointed himself and Haji Abdul Rahim Saite the trustes of the said trust The original lessee paid rent to the trustees upto March, 1948, and thereafter the 2nd defendant-appellant paid the same. The option of renewal of the lease was not exercised but the lessee continued to occupy as before from year to year. In 1957, the defendants agreed to pay rent at Rs 500 per annum They started to make default in payment of the rent from the month of June of that year On 7th July, 1959 the trustees decided to determine the lease after the expiry of the yearly lease on 29th January, 1960, and gave notice to the tenants accordingly.

On 13th November, 1945, there was another lease between the said trustees and one Thiruvengadam in respect of a portion of the land bearing S No 434/1 measuring about Ac 0-50 for a period of 7 years at an annual rental of Rs. 350 with an option of renewal for a further period of not more than 8 years on the same terms and conditions but at an increased rental of Rs 400 per annum The lease provided that the rent of the land for the first seven years was to commence from 1st January, 1945 The lessee was to have the right to use the land as a business place putting up shelters, erections and fixtures required for running his business at his own cost but he was not to have any right to remove or cause the same to be removed either before or after the expiration of the period or when it became necessary for the lessee to vacate the land for default in payment of rent The lessee was further not to use the building as a cinema hall without the written permission of the lessor. The lessee exercised his option of renewal and got it for a further period up to 31st April, 1959. He however did not vacate the land and give possession thereof to the lessor in spite of demands.

A common defence taken in both the suits was that the property demised to the defendants had actually vested in a family trust even as early as 1918 and Hashim Sait had no right to deal with the same as lessor in 1941 nor was he competent to create the trust in 1945 and hence the plaintiffs could not institute the suit. By the amendment of written statements in both the suits the defendants raised a plea that the suit was barred under the Madras Buildings (Lease and Rent Control) Act, 1960

The Subordinate Judge found that the plaintiffs had no right or *locus standi* to maintain the suit, but he also held that the said Act did not apply to the suit property.

The appeals by the landlord were allowed by the District Judge. He held that it was not open to the tenants to deny their landlord's title.

In further appeal to the High Court it was held that the suits were maintainable and that there was no substance in the defence that the plaintiffs were not competent to institute the suits. The High Court held that though the plaintiffs had loosely described themselves as trustees in strict law they would be only mutawalis of a wakf and any person in management of the wakf property like the plaintiffs could be mutawalis and competent to institute the suit on behalf of the wakf The High Court found it unnecessary to consider the question about the Rent Control Act.

Before us Mr. Gokhale argued that the civil Courts have no jurisdiction to entertain the suit for eviction in view of the Madras Buildings (Lease and Rent Control) Act of 1960 which applied to the facts of this case. Under section 10, sub-section (2) of the Act a landlord seeking to evict a tenant had to apply to the Controller for a direction in that behalf. There is no dispute that the Act would be applicable if what was let was ' building' within the meaning of section 2, clause (2) of the Act which runs as follows :

> " 'building ' means any building or hut or part of a building or hut let or to be let separately for residential or non-residential purposes and includes:
>
> (*a*) the garden, grounds and out-houses if any appurtenant to such building, hut or part of such building or hut and let or to be let along with such building or hut.
>
> (*b*) any furniture supplied by the landlord for use in such building or hut or part of a building or hut,
>
> but does not include a room in a hotel or boarding house."

On a reference to the deeds of lease of 1941 and 1945 Mr. Gokhale contended that it was clear that the land mentioned therein was not vacant but had certainly some structures and buildings standing thereon and it was not open to the landlords to evict the tenants therefrom except by following the procedure laid down in the Act. He referred to certain decisions of the Madras High Court in aid of his contention which we shall presently examine.

The decisions of the years 1963 and 1964 referred to by him followed the earlier decision in *Irani* v *Chidambaram Chettiar*[1], It appears from the judgment of Raghava Rao, J in that case that the subject-matter of the lease consisted of (1) the site underneath the actual building known as Gaiety Theatre which belonged to the lessee; (2) the small sheds at one end of the premises and (3) all the vacant space within exclusive of the theatre and the sheds. The learned Judge stated that:

> " The entire premises embracing the three portions demised as well as the lessee's own structure known as Gaiety Theatre are described in the record as Blacker's stables and at the time of Exhibit P-9 (the deed of lease) the Gaiety Theatre having become the property of the lessee himself it was the rest of Blackers stables consisting of three portions just referred to that was let out to the defendant."

The question was whether what was let out was a ' building ' within the definition of the Madras Buildings (Lease and Rent Control) Act of 1946. For the appellant it was contended that the description of the premises in the lease deed as well as in the prior leases pointed to the land principally as a subject-matter of the letting and since the sheds occupied only an inconsequential part of the entire premises there was no reason to suppose that what was let out was a building. The description of the premises in the deed of lease was:

> " that piece or parcel of land lying at No. 1/1 Blackers Road more particularly described in the schedule hereto annexed and the compound wall and certain buildings standing thereon."

The description in the schedule was

> " that piece or parcel of land together with the buildings being a portion of the premises known as Blackers stables situate and bearing door No. 1/1, Blackers Road, etc "

According to Raghava Rao, J.

> " It is sufficient to say that there are some buildings within the premises and that from the year 1914 down to Exhibit P-9 the land and the building enclosed in the compound wall have been treated as one unit and have always been leased out as one property."

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1. (1952) 2 M.L.J. 221.

The learned Judges were unable to accept the contention of the appellant-landlord that in substance the letting was of the land and not of any building

In *Ramaswami Pathar* v. *J K. Devasthanam*[1], the tenant-appellant had (to quote the words of the judgment)

" presumably with the permission of the respondent put up a superstructure on the land which forms the subject-matter of dispute in this case. While the superstructure was in existence the appellant obtained a lease from the respondent the owner of the site for a period of five years. Under the terms of the lease deed, the appellant agreed to surrender possession of the land after the period of the lease and during the interim period not to sell or otherwise alienate the superstructure without the permission of the landlord."

It was further found that

" the site alone is the property of the respondent and that at the time when the lease was granted there was a superstructure belonging to the appellant on the property."

Referring to the judgment in *Irani* v *Chidambara Chetti's case*[2], the learned judges took the view that the lessee could not be evicted from the property.

Much to the same effect is the judgment in *Palaniappa Chettiar* v. *Vairavan Chettiar*[3]. There also it appears that at the time when the lease was granted there was on the property one half of the entire superstructure known as Raja Talkies owned by the respondent According to the learned judges although the lease did not specifically describe the property as a building there were indications in it to show that the lease was granted on the basis that there was a building on the property of which the respondent was the owner. They held that the question before them was answered by the decision in *Irani's case*[2].

In *Palaniappa Chettiar* v. *Babu Sahib*[4], the facts were as follows. There was a lease in 1947 in favour of the 1st respondent in the suit of a vacant site but the deed contemplated the putting up of buildings thereon and actually some buildings were put up It appears that there was no renewal of lease in this case as in *Palaniappa Chettiar's case*[3], and the Counsel for the plaintiffs sought to distinguish the case on that ground. The learned Judge found that although the lease itself did not specifically mention the purpose it was one to enable the first defendant to put up buildings on the site and to carry on his business. It was said

" The lease having therefore clearly contemplated the vacant site let out being built upon and when such buildings were put up during the currency of the lease the building became part of the land and therefore the land became indistinguishable from the buildings In other words they were integral parts of each other for the purpose of the lease and the lease should therefore be regarded as of buildings as well "

With all respect to the learned Judges of the Madras High Court trying the cases in 1963 and 1964 above referred to, it seems to us that in following *Irani's case*[2] they fell into an error. In *Irani's case*[2], what was let out was not a vacant site. Even leaving out of account the superstructure of Gaiety Theatre there were certain stalls and structures on the land which would come within the definition of building in the Act then in force.

In order to determine whether the lease is of a vacant land or of a building within the meaning of the Act of 1960 we must take into account both the form and the substance of the transaction. In form the transactions in suit were leases of vacant land. The substance of the transactions points to the same conclusion The lease of 1941 shows that the landlord was aware that there were certain structures on the land but what was let out was not the structures but the entire land of Ac. 2-00 It was with-

1. (1963) 1 M L J 60
2. (1952) 2 M L J. 221.
3 (1963) 1 M.L J 130, I.L.R. (1963) Mad. 519.
4. (1964) 1 M.L J 110.

in the rights of the lessee to remove all the materials of the buildings and sheds which were erected on the land within 2 months after the date of the expiry of the agreement and the landlord was to have a charge thereon only in case of default of payment of the yearly rent. The structures belonged entirely to the lessee and they did not form the subject-matter of the lease

The lease of 1945 was of a portion of S No E. 434/1 measuring Ac 0-50. The rent for the first seven years was to be Rs 300 annually and for the second period of 8 years at Rs 400 per annum Although the lessee was to have the right to use the land as business premises and to put up erections and fixtures for running his business he was not to have any right to remove or cause them to be removed either before or after the expiration of the period mentioned It is clear that what was let out in both leases was the land without any structures.

It seems to us therefore that neither in form nor in substance was there a letting of any building In the first case there were some structures on the land in 1941 but the landlord had no interest thereon and the tenant unless he made default in payment of rent could remove at any time within 2 months after the expiry of the lease, the building materials by demolishing the structures. In the second case, although the structures were to become the property of the landlord at the end of the term the letting was only of the vacant land The landlord did not let out any building which could come within the mischief of the Act

Our conclusion is supported by the decision of this Court in *Krishnapasuba* v. *Dattatreya*[1]. There a rent note was executed stating that the subject-matter of the letting for which the rent was payable by the tenant was open land with a khatta It was admitted that a khatta was not a building Clause (1) of the note shows that on a portion of the land the tenant had built a shed of corrugated iron sheets at his own cost and clause (5) stated that on the termination of the tenancy the tenant could remove the structure raised by him including the timber, the pillars, the iron materials etc. It was contended on behalf of the tenants in that case that the property let out being a 'premises' within the meaning of section 5 (8) of the Bombay Rents Hotel and Lodging Houses Rates Control Act (LVII of 1947) section 13 (1) was a bar to the landlord obtaining a decree for eviction in respect of premises which were building and ground appurtenant to the building It was observed by this Court that:

> "The building belonged to the tenant and was not the subject-matter of the letting The land only was the subject-matter of the letting Consequently the premises are land within the meaning of section 13 (1) (1) "

A faint argument was put up that the plaintiffs were not the proper persons to maintain the suit It seems to us that there is no substance in this contention either. The lease of 1945 was in favour of the trustees and the tenant could not be heard to deny the landlord's title. As regards the lease of 1941 nothing was shown to us to take a view different from that arrived at by the High Court

In the result both the appeals fail and are dismissed with costs. One hearing fee. On the undertaking given by the appellants to give delivery of possession at the end of six months from date execution is not to be proceeded with till then

V.K. *Appeals dismissed.*

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1. (1966) 1 S C J 601, A.I.R 1966 S C. 1024.

THE SUPREME COURT OF INDIA

(Civil Appellate Jurisdiction)

PRESENT —J. C. SHAH AND V RAMASWAMI, JJ

Balammal and others . *Appellants**

v.

The State of Madras and others . *Respondents.*

Madras City Improvement Trust Act (XXXVII of 1950), *section* 173 (2) *and clause* 6 (2) *of the Schedule thereto—Compulsory acquisition of land for housing schemes—Notifications for acquisition issued prior to Act—Compensation awardable —Statutory solatium not provided for—Discriminatory—Void under the equality clause—Constitution of India* (1950), *Article* 14

Practice—Supreme Court—Compulsory acquisition of land—Appeals relating to valuation—Requisites for entertaining them

By section 173 (2) of the Madras Act (XXXVII of 1950) all proceedings which were commenced under the prior Madras Act (XVI of 1945) were to be deemed to be taken under the 1950 Act Hence by virtue of clause 6 (2) of the Schedule to the 1950 Act read with that section compensation awardable could not include the statutory solatium (provided under section 23 (2) of Land Acquisition Act) even in proceedings commenced under the 1945 Act

Sub-clause (2) of clause 6 of the Schedule to the Act in so far as it deprives the owners of land compulsorily acquired of the statutory addition to the market value of the land under section 23 (2) of the Land Acquisition Act is discriminatory and so void as violative of Article 14 of the Constitution of India, 1950—Equality before law.

The Supreme Court will not interfere with decisions in appeals relating to the valuation of lands compulsorily acquired unless there is something to show that the judgment cannot be supported by reason of a wrong principle or because some important point affecting valuation has been overlooked or misapplied.

The law which determines the market value as on the date of the notifications for acquisition does not offend Article 31 (2) of the Constitution

Appeals from the Judgments and Decrees dated the 5th November, 1953 of the Madras High Court in Civil Appeals Suits Nos 116 of 1953, etc

R Ramamurthy Iyer, T. S. Rangarajan and *R Gopalakrishnan*, Advocates for Appellants (in C As Nos 489, 514, 645-647 of 1965 and 2109 and 2228 of 1966), and for Respondents (in C As Nos 513 and 648 of 1965), for Respondents Nos 5 and 6 (in C As Nos 960-965, 967 and 989-993 of 1965), and for Respondents Nos. 1 and 4 (in C A No 966 of 1965)

R. Thiagarajan, Advocate for Appellants in C As Nos 650-651 of 1965.

P. Rami Reddy, Senior Advocate, (*A V Nair*, Advocate, with him) for Appellants (in C.As Nos 989-993 of 1965) and for Respondent No. 2 (in C.As. Nos. 960-962, 964 and 967 of 1965).

K N Mudaliyar, Advocate-General for the State of Madras and *A V. Rangam*, Advocate, for Respondents (in C As Nos 489, 514, 645-647, 650-651 of 1965 and 2109 and 2228 of 1966) for Respondent No 1 (in C A Nos. 989-993 of 1965), and for Appellants (in C As. Nos. 513, 648, 960 to 967 of 1965

The Judgment of the Court was delivered by

Shah, J—In this group of appeals arising out of land acquisition references, two questions fall to be determined·

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*C As Nos 489, 513, 514, 645-648, 650, 651, 960-967 and 989-993 of 1965 and 2109 and 2228 of 1966. 23rd April, 1968.

(1) Whether the owners are entitled to get 15 per cent solatium in addition to the market value for compulsory acquisition of the lands, and

(2) Whether the rate at which compensation has been awarded to the claimants for compulsory acquisition of the lands is justified by the evidence.

The Legislature of the Province of Madras enacted the Madras City Improvement Trust Act XVI of 1945, to provide, *inter alia*, for improvement and expansion of the City of Madras by opening up congested areas. Under section 3 of the Act, a Board of Trustees, with power to carry out the provisions of the Act, is to be constituted The Board is empowered by the Act to frame a scheme to be called "Town Expansion Scheme", and to notify the scheme and also to publish it in the Government Gazette. After considering the objections raised by persons affected by the scheme the Government may sanction the improvement scheme with or without modifications and announce the fact by notification. Publication of the notification is conclusive evidence that the scheme has been duly framed and sanctioned. The Board shall then proceed with the execution of the scheme. The Board is by virtue of section 71 authorised, with the previous sanction of the Government, to acquire land under the provisions of the Land Acquisition Act, 1894, for carrying out any of the purposes of the Act Section 72 authorises the Government to constitute a Tribunal for performing the functions of the Court in reference to the acquisition of land for the Board under the Land Acquisition Act, 1894 By section 73 it is provided:

"For the purpose of acquiring land for the Board under the Land Acquisition Act, 1894—

(*a*) the said Act shall be subject to the modifications specified in the Schedule; and

(*b*) * * * * "

The Schedule to the Act provided for modifications in the Land Acquisition Act, 1894, for certain specific purposes. By clause 6 (2) of the Schedule the acquiring authority is not liable to pay the additional 15 per cent of the market value under section 23 (2) of the Land Acquisition Act,

"where the land acquired is situated in an area which is declared by the Provincial Government to be a congested or slum area and the land is not in the actual possession of the owner"

It may suffice to state that the land in the cases out of which these appeals arise did not fall within the proviso and in addition to the market value fifteen per cent on the market value in consideration of the compulsory nature of the acquisition was payable for acquisition of land made under Act XVI of 1945

Madras Act XVI of 1945 was repealed and was replaced by Madras Act XXXVI of 1950 The scheme of the new Act remained, with some modifications, substantially the same as the scheme of the repealed Act By section 173 (2) it was provided that

"Notwithstanding such repeal, all action taken, all notifications published, all rules and orders issued and all things done under that Act (XVI of 1945) shall be deemed to have been taken, published, issued and done under this Act, and may be continued thereunder."

All the proceedings commenced under Act XVI of 1945 were therefore to be deemed to have been taken under Act XXXVII of 1950 An important change, however, was made in the Schedule to Act XXXVII of 1950 which modified the provisions of the Land Acquisition Act, 1894, in its application to the acquisition of lands under that Act. By clause 6 (2) of the Schedule it was provided that sub-section (2) of section 23 shall be omitted and in lieu thereof the following sub-section shall be deemed to have been substituted, namely.—

"(2) For the purpose of clause first of sub-section (1) of this section—

(a) if the market value of the land has been increased or decreased owing to the land falling within or near to the alignment of a projected public street, so much of the increase or decrease as may be due to such cause shall be disregarded ;

(b) if any person, otherwise than in accordance with the provisions of this Act, erects, re-erects, adds to, or alters any wall or building so as to make the same project into the street alignment or beyond the building line prescribed by any scheme made under this Act, then, any increase in the market value resulting from such erection, re-erection, addition or alteration shall be disregarded. "

By that amendment persons whose lands were compulsorily acquired under the Madras City Improvement Trust Act XXXVII of 1950 were deprived of the right to the solatium which would be awarded if the lands were acquired under the Land Acquisition Act.

The Board of Trustees framed two schemes for improvement of the town of Madras—"the Mandavalli Scheme" and "the Mowbrays Road Scheme". For the Mandavalli Scheme a notification under section 47 of Act XVI of 1945 which operates as a notification under section 4 (1) of the Land Acquisition Act, 1894, was issued on 24th August, 1948 A notification under section 53 which is effective as a notification under section 6 of the Land Acquisition Act was issued on 23rd May, 1950, and the Land Acquisition Officer made his award of compensation on 22nd November, 1951 Under that scheme 1,400 "grounds" (each ground is equal to 2,400 sq ft.) of land were notified for acquisition. For the Mowbrays Road Scheme which was to cover 689 grounds, the notification under section 47 of the Act of 1945 was issued on October 26, 1948, the notification under section 53 was issued on 23rd May, 1950, and the award was made on 17th April, 1952 The notifications under sections 47 and 53 in respect of the two schemes published in exercise of the powers under Act XVI of 1945 and all actions and proceedings taken thereunder were by virtue of section 173 (2) of Act XXXVII of 1950 to be deemed to have been issued, and taken under the repealing Act.

The Land Acquisition Officer declined to award 15 per cent solatium to the owners of the lands. He valued the lands according to a scheme of classification of lands to which we will presently refer, and determined the compensation awardable to the owners on that basis. References were then made at the instance of the owners under section 18 of the Land Acquisition Act to the Chief Judge of the Court of Small Causes, Madras, for enhanced compensation. The Chief Judge awarded enhanced compensation and in addition thereto awarded 15 per cent solatium on the market value of the land Against the awards made by the Chief Judge, appeals were preferred by the State of Madras and by the owners of the lands. The High Court modified the awards made by the Chief Judge and determined the market value of the lands at rates in excess of the rates at which the Chief Judge had awarded compensation, but set aside the order awarding 15 per cent solatium on the market value. Against the awards made by the High Court, these appeals are preferred by the State and by the owners of the lands In Appeals Nos 513, 648 and 960-967 of 1965 filed by the State, modification in the rates of market value made by the High Court for determining the compensation has been challenged In Appeals Nos. 489,514,645-647, 650-651, 989-993 of 1965 and 2109 and 2228 of 1966 filed by the owners of the lands the claimants have claimed 15 per cent solatium which has been denied to them by the High Court and have also claimed additional compensation.

We may first deal with the claim of the owners to be awarded solatium at the rate of 15 per cent on the market value of the lands. If the lands of the owners were notified for acquisition under the Land Acquisition Act, the acquiring authority was bound to award in addition to the market value of the land fifteen per centum on the "market value in consideration of the compulsory nature of the acquisition": *vide* section 23 (2) of the Land Acquisition Act. But since the lands were notified for acquisition for the purpose of Town Expansion Scheme, it is claimed that the owners were, by virtue of Act XXXVII of 1950, deprived of the right to additional compensation It was urged by Counsel for the owners of the lands that proceedings for acquisition were commenced by the issue of notifications under sections 47 and

53 of Act XVI of 1945, and the owners acquired a vested right to compensation inclusive of 15 per cent solatium, and that right could not be taken away by repeal of the Act and enactment of a new Act when proceedings for assessment of compensation were pending before the Land Acquisition Officer It is true that by clause 6 of the Schedule to Act XVI of 1945 solatium was awardable to the owners of the lands acquired for the Improvement Trusts, but since by section 173 (2) of Act XXXVII of 1950 all the proceedings which were commenced under the Act of 1945 were to be deemed to be taken under Act XXXVII of 1950, compensation awardable by virtue of clause 6 of the Schedule to the new Act read with section 173 (2) of that Act could not include the statutory solatium The Legislature has thereby deprived the owners of the lands of a right to compensation even in proceedings for acquisition commenced before Act XXXVII of 1950.

But, in our judgment, Counsel for the owners are right in contending that sub-clause (2) of clause 6 of the Schedule to Act XXXVII of 1950, in so far as it deprived the owners of the lands of the statutory addition to the market value of the lands under section 23 (2) of the Land Acquisition Act is violative of the equality clause of the Constitution, and is on that account void If the State had acquired the lands for improvement of the town under the Land Acquisition Act, the acquiring authority was bound to award in addition to the market value 15 per cent solatium under section 23 (2) of the Land Acquisition Act But by acquiring the lands under the Land Acquisition Act as modified by the Schedule to the Madras City Improvement Trust Act XXXVII of 1950 for the Improvement Trust which also is a public purpose, the owners are, it is claimed, deprived of the right to the statutory addition An owner of land is ordinarily entitled to receive the solatium in addition to the market value, for compulsory acquisition of his land, if it is acquired under the Land Acquisition Act, but not if it is acquired under the Madras City Improvement Trust Act A clear case of discrimination which infringes the guarantee of equal protection of the law arises, and the provision which is more prejudicial to the owners of the lands which are compulsorily acquired must, on the decisions of this Court, be deemed invalid

In *The State of West Bengal* v. *Mrs Bela Banerjee and others*[1], the West Bengal Land Development and Planning Act XXI of 1948 passed primarily for the settlement of immigrants who had migrated into West Bengal provided for compulsory acquisition of land for public purposes, but the amount of compensation was not to exceed the market value of the land on 31st December, 1946 It was held by this Court that the provision fixing the market value of the land on 31st December, 1946, as the ceiling on compensation without reference to the value of the land at the time of acquisition, was arbitrary and could not be regarded as due compliance in letter and spirit with the requirements of Article 31 (2) of the Constitution

In *State of Madras* v. *D Namasivaya Mudaliar and others*[2], this Court struck down the Madras Lignite (Acquisition of Land) Act XI of 1953), which provided, *inter alia*, that compensation for acquisition of lignite bearing lands under the Land Acquisition Act shall be assessed on the market value of the land prevailing on 28th August, 1947, and not on the date on which the notification was issued under section 4 (1) of the Land Acquisition Act.

In *P. Vajravelu Mudaliar* v. *Special Deputy Collector, Madras and another*[3], it was held that the Land Acquisition (Madras Amendment) Act, 1961, which *inter alia* provided that for the compulsory acquisition of land, the owner will be entitled to the market value of the land at the date of the publication of the notification under section 4, sub-section (1) of the Land Acquisition Act or an amount equal to the average market value of the land during the five years immediately preceding such date, whichever is less, and also that he shall be entitled to solatium at the rate of "five per centum", was *pro tanto* void as infringing Article 14 of the Constitution.

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1. (1954) S C J 95 (1954) 1 M L J 162 (1954) S C R 558

2 (1965) 2 An W R (S C) 82 (1965) 2 M L J. (S C.) 82 . (1965) 2 S C J 563 . (1964) 6 S. C R 936

3 (1965) 1 S C R 614 (1964) 2 S C J 703 (1964) 2 M L J (S C) 173 (1964) 2 An W R (S C.) 173.

This Court observed that discrimination between persons whose lands were acquired for housing schemes and those whose lands were acquired for other public purposes was not sustained on the principle of any reasonable classification founded on intelligible differentia which had a rational relation to the object sought to be achieved.

In *N. B. Jeejeebhoy* v. *Assistant Collector, Thana Prant, Thana*[1], this Court struck down as violative of Article 14 of the Constitution a provision made by the Land Acquisition (Bombay Amendment) Act, 1948, which enjoined the acquiring authority to assess compensation for the lands compulsorily acquired for the purpose of "a housing scheme" in the State of Bombay at the market rate prevailing not on the date of the issue of the notification under section 4 of the Land Acquisition Act 1894, but on 1st January, 1948.

Compensation awardable for compulsory acquisition of property must be a just equivalent of the value of the land of which a person is deprived. When compensation payable to the owner is to be based on the market value prevailing on different dates, according as it is awardable under the Land Acquisition Act or under some special provision or when the compensation awardable to the owners of the lands under the Land Acquisition Act is reduced by a special provision unless the distinction is supported by any rational classification having reasonable relation to the subject-matter or to the object sought to be achieved by the special provision and is founded on some intelligible differentia, the special provision must be held void, as infringing the guarantee under Article 14.

The judgment of this Court in *Dalchand and others* v *Delhi Improvement Trust (New Delhi Development Authority), New Delhi*[2], on which reliance was placed by the Advocate-General has no application to that principle In *Dalchand's case*[2] under the U P Town Improvement Act VIII of 1908 as extended to the territory of Delhi, the Delhi Improvemt Trust brought into force a scheme for industrial development under which lands were acquired. The Trust paid compensation based on the market value, but without the statutory solatium. It was observed in that case that if the land had been acquired under the Land Acquisition Act the claimants would have been entitled to statutory solatium, but not when they were acquired for the Delhi Improvement Trust In *Dalchand's case*[3] the validity of the Act was not open to challenge The notification for acquisition of land was issued many years before the date of the commencement of the Constitution and the land had vested in the Trust also before the commencement of the Constitution No question of deprivation of a fundamental right of equality could therefore be set up in that case and this Court held that the claimants were not entitled to plead that if the land had been acquired under the Land Acquisition Act, they might have become entitled to a statutory solatium in addition to the market value, whereas under the U. P. Town Improvement Act they were not so entitled

We, therefore, hold that clause 6 sub-clause (2) of the Schedule read with section 73 of Madras Act XXXVII of 1950 which deprives the owners of the statutory right to solatium at the rate of 15 per cent. on the market value of the lands is invalid, and the owners of the lands are entitled to the statutory solatium under section 23 (2) of the Land Acquisition Act in consideration of compulsory acquisition of their lands.

We may now turn to the argument that rates at which compensation was awarded to the owners of the lands was not justified by the evidence Two schemes were framed by the Board of Trustees—(1) Mandavalli Scheme ; and (2) Mowbrays Road Scheme. The Land Acquisition Officer classified the lands in the Mandavalli Scheme into two groups—'the developed group' and the undeveloped group'. He designated small sites requiring no further improvement and which were ready for being built upon as 'developed lands' and the rest as 'undeveloped lands' and fixed the market value of the developed lands at Rs. 1,550 per ground. In determining the value of undeveloped lands he reduced an amount of Rs. 500 per ground

1. (1965) 1 S C R 636
2. (1966) S.C.R. (Supp.) 27

being the estimated proportionate share of the cost for setting apart land for roads and for providing amenities and fixed the market value at Rs 1,050 per ground. Further adjustments were made in that rate for lands in individual cases in the light of their situation. The Chief Judge adopted the classification made by the Land Acquisition Officer, and assessed the land value of developed plots at Rs 2,000 per ground. For arriving at the value for undeveloped lands, he reduced the value by Rs. 500 per ground for roads and cost of development and awarded compensation at the rate of Rs. 1,500 per ground. The High Court also accepted the grouping of the lands into two broad groups as adopted by the Chief Judge and the Land Acquisition Officer, and further sub-divided the developed plots into "nice desirable plots exceeding one ground and below three grounds, and facing well-known, convenient and already formed roads" and "standard developed plots." The former were Group I-A lands which were valued at Rs. 2,250 per ground, and the latter which were called Group I-B lands were valued at Rs 2,000 per ground In the view of the High Court a reduction of Rs 400 per ground for the value of standard developed lands was adequate to meet the expenses for providing amenities. The basic value of undeveloped plots was assessed at Rs 1,600 per ground Having regard, however, to the superior situation of some of the undeveloped plots they grouped them into Group 2-A and awarded compensation at the rate of Rs. 1,750 per ground, and for one plot which in view of its "desirable situation" was awarded the rate of Rs 1,850 per ground. The remaining lands which were called Group 2-B lands were awarded compensation at the rate of Rs. 1,600 per ground

The Mowbrays Road Scheme plots were classified by the Land Acquisition Officer into four groups Group I-A, I-B, I-C and Group II For Groups I-A, I-B and I-C lands he determined the basic rate of compensation per ground at Rs 2,500, Rs 2,400 and Rs 2,000 respectively, and on the footing that these three groups were undeveloped plots he reduced the rate by Rs. 800 per ground for expenses of laying out roads and providing other amenities. He valued the Group-II lands at Rs 1,600 and reduced it by 25 per cent. for expenses for laying out roads and providing other amenities. The Chief Judge substantially adopted the same classification. He designated the lands as Group I, Group-II, Group-III and Group IV. After considering the situation of the lands, the Chief Judge estimated the basic compensation for Group I at the rate of Rs. 2,400, for Group II at Rs 2,300 and for Group III at Rs 1,900 and declined to make any deduction for development on the footing that lands were developed lands and no expenditure was required to be incurred and no deduction had to be made. For the interior lands forming Group IV he estimated the basic price at Rs. 1,900 per ground and made a deduction of Rs 550 per ground for providing amenities and for meeting the expenses incidental to the development of their lands In the view of the High Court the rate of compensation per ground should be respectively Rs. 2,500, Rs. 2,400 and Rs 2,250 for lands in Groups I, II, and III . For Group IV the High Court assessed compensation at the rate of Rs. 1,630 per ground. In arriving at that valuation they took into consideration the situation of the land, the stage of development the lands had reached, the size of the plots and the estimated cost of raising the level of the lands and providing other amenities which would make them similar to developed lands.

On behalf of the State it is urged that the High Court erred in increasing the value of the lands in the Mowbrays Road Scheme and that the High Court should have maintained the order of the Chief Judge relating to those lands. On behalf of the owners of the lands it is urged, especially for the lands in the Mandavalli Scheme, that there were transactions of sale proximate in time to the date on which the notification under section 47 of Act XVI of 1945 was issued, which disclosed a rate of market value varying between Rs 2,000 and Rs 3,000 per ground, and the Chief Judge and the High Court were not justified in accepting the lowest rate as determinative of the market value of the lands in the neighbourhood. But the instances relied upon by the owners are of sales of very small pieces of land approximately of one-half of a ground or less, and we do not think that the High Court has committed any error of principle in rejecting the higher rates furnished by instances of sale of tiny pieces of land Again no evidence was led before the Chief Judge

that the sale transactions reflected the current rate of market value of lands in the locality, and that the prices paid were not affected by special considerations

In *Nowroji Rustomji Wadia* v *Bombay Government*[1], the Judicial Committee held that in appeals involving the valuation of property, the Judicial Committee will not entertain an appeal as to the value of property compulsorily acquired, except upon questions of principle, including errors in appreciating or applying the rules of evidence, or the judicial methods of weighing evidence

In *Prag Narain* v *Collector of Agra*[2], the Judicial Committee observed that "it is well settled that this Board will not review the decree of an Indian Appellate Court merely upon questions of value", and reiterated the observations made in *Narsingh Das* v *Secretary of State for India*[3] that the Board will not interfere with judgments of the Courts in India as to matters involving valuation of property and similar questions where knowledge of the circumstances and of the district may have an important bearing on the conclusion reached, unless there is something to show, not merely that on the balance of evidence it would be possible to reach a different conclusion, but that the judgment cannot be supported as it stands, either by reason of a wrong application of principle or because some important point in the evidence has been overlooked or misapplied.

This Court has adopted a similar approach in appeals which raise disputes relating to valuation of lands compulsorily acquired In *The Special Land Acquisition Officer, Bangalore* v *T. Adinarayan Setty*[4], S K Das, J., speaking for the Court observed :

> "We are content to proceed in this case on the footing that we should not interfere unless there is something to show, not merely that on the balance of evidence it is possible to reach a different conclusion, but that the judgment cannot be supported by reason of a wrong application of principle or because some important point affecting valuation has been overlooked or misapplied."

The learned Advocate-General appearing on behalf of the State of Madras has not invited our attention to any such error of principle or non-application of mind to any important piece of evidence, which may have a bearing on the valuation The learned Advocates appearing on behalf of the owners of the lands also have not been able to invite our attention to any such error in the judgment of the High Court

Mr P Ram Reddy appearing on behalf of respondents in Appeals Nos 960-962, 964 and 967 and the appellants in Appeals Nos 989-993 of 1965 raised a special argument which we may now consider. Counsel contended that the provisions of the Land Acquisition Act which are made applicable by section 73 read with the Schedule to the Madras City Improvement Trust Act and which require the market value to be awarded to the owners of the land as on the date on which the notification under section 47 of the Act is issued deprive the owner of the true compensation which is a just equivalent of the value of the lands expropriated. Counsel says that in all cases after the notification is issued, there is a considerable time-lag and the title to the land is extinguished only when the land vests absolutely in the Government under section 16 of the Land Acquisition Act free from all encumbrances. He says that whereas the compensation payable is the market value prevailing on the date of the issue of the notification under section 4 of the Land Acquisition Act the title of the owners to the land is extinguished on the date on which possession is taken, and on that account compensation is determined with reference to a date which in some cases may be years before the date on which the title is extinguished. Counsel invited our attention to the observations made by Subba Rao, J, in *P Vajravelu Mudaliar's case*[5] that under Article 31 (2) a person whose land was acquired was entitled to compensation *i e* a "just equivalent" of the land of which he was deprived He contended that if the 'just equivalent' of the

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1. (1925) L R 52 I A. 367 49 M L J 233
2. (1932) L R 59 I A. 155 · 62 M L J 682
3. (1925) L R 52 I A 133 48 M L J 386
4. (1959) 1 S.C.R. (Supp) 404· (1959) S.C. J 431
5. (1964) 2 S C J 703· (1964) 2 M L J (S C) 173· (1962) 2 An.W.R. (S C.) 173 . (1965) 1 S C.R. 614.

land is to be awarded, it must be based on the market value of the land on the date on which the title is extinguished and not the market value at some date anterior thereto. But in *P Vajiavelu Mudaliar's case*[1] it was decided that the law which determines the market value as at the date of the notification under section 4 (1) of the Land Acquisition Act does not offend Article 31 (2) of the Constitution.

Mr. Thiagarajan appearing on behalf of the appellants in Appeals Nos. 650 and 651 of 1954 contended that no adequate compensation was awarded to the owners in respect of charges for severance. Counsel submitted that a part of the compound of a Cinema Theatre was acquired compulsorily and that deprived the owner of the land of the facility of providing additional amenities to the patrons of the theatre and also of making constructions on the land expanding the business, and on that account the owners were entitled to compensation either under "*Thirdly*" or "*Fourthly*" or "*Sixthly*" of section 23 (1) of the Land Acquisition Act. Under these clauses the damages sustained by the person interested by reason of severing such land from his other land, or by reason of the acquisition injuriously affecting his other property movable or immovable in any other manner, or his earnings, or the damage *bona fide* resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land may be awarded to the owners. But there is no evidence on the record to which our attention was invited which supported the case of the appellants to compensation under any of the clauses. There is nothing to prove that the owners had sustained any loss by reason of the severance of the land from their other lands, nor is there any evidence to prove that by reason of the acquisition the remaining lands were injuriously affected or the earnings of the owners were affected, nor is there any evidence to show that there was any damage resulting from diminution of the profits of the land between the time of the publication of the declaration and the time of taking possession of the land. The High Court has awarded Rs. 2,500 as compensation for severance, and we see no reason to interfere with that order.

The appeals filed by the State therefore fail and are dismissed with costs. The appeals filed by the owners are allowed and they will be awarded 15 per cent. solatium under section 23 (2) of the Land Acquisition Act on the market value of the land in addition to the compensation awarded to them. Appellants in each of these appeals will be entitled to their costs in this Court. Parties appearing through the same Counsel will be entitled to one hearing fee only.

K.G S. *Appeals by State dismissed ; Appeals by owners allowed in part—Statutory solatium awarded.*

THE SUPREME COURT OF INDIA.

(Civil Appellate Jurisdiction.)

PRESENT .—J C SHAH, R. S BACHAWAT, G K. MITTER, C A. VAIDIALINGAM AND K S. HEGDE, JJ.

The State of Madras .. *Appellant**

v.

N K. Nataraja Mudaliar .. *Respondent.*

M/s. Sitalakshmi Mills Ltd and 9 others .. *Interveners.*

Central Sales Tax Act (LXXIV of 1956), *section* 8—*Sales tax at varying rates prevailing in different States—Exemptions also on the basis of State law—If restrictions on freedom of trade etc —Constitutional validity of sub-section* (2), (2-A) *and* (5)—*Constitution of India* (1950), *Articles* 301 *and* 303—*Not infringed.*

Held , The provisions of sections 8 (2), 8 (2-A) and 8 (5) Central Sales Tax Act do not infringe either Article 301 or 303 of the Constitution, 1950, and so are not *ultra vires* the Parliament.

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* C.A. No. 763 of 1967 18th April, 1968.

(Per *Shah, Mitter* and *Vaidialingam, J*)—Article 301 enjoins that trade throughout India shall be free; it does not merely protect inter-State trade or operate against inter-State barriers; all trade is protected, whether inter-State or intra-State. But Article 302 enables Parliament by law to impose such restrictions on the freedom of trade as may be required in the public interest.

It must be taken as settled law that restrictions or impediments which directly and immediately impede or hamper the free flow of trade, commerce and intercourse fall within the prohibition imposed by Article 301 and, may be regarded as void

There is also no doubt that exercise of the power to tax may normally be presumed to be in the public interest.

It is settled law that a tax may, in certain cases, directly and immediately restrict or hamper the flow of trade; but every imposition of tax does not do so.

An Act which is merely enacted for the purpose of imposing tax to be collected and retained by a State, is not a law giving or authorising the giving of any preference to one State over another or making or authorising the making of any discrimination between one State and another merely because varying rates of tax prevail in different States. The flow of trade does not necessarily depend upon the rates of sales tax.

By leaving it to the States to levy sales tax in respect of a commodity and by authorising the State from which the movement of the goods commences to levy, on transactions of sale, Central sales-tax at rates prevailing in the State, subject to the limitation that they are not too high to scare away consumers, no discrimination can be deemed to be practised

Per *Bachawat, J*—A tax on intra-State sale does not normally offend Article 301 of the Constitution which does not make any distinction between movement from one part of the State to another or from one State to another. Logically therefore tax on inter-State sale under Central Sales Tax Act levied at the State rate would not operate directly or immediately the free flow of trade Even assuming that the Central Sales Tax Act is within the mischief of Article 301, it is saved by Article 302 as being made by Parliament in public interest.

Per *Hegde, J.*—By its very composition it is unlikely that Parliament would have regional bias or would adopt a parochial approach There is also the presumption of the constitutionality of a statute. Unless it is shown that the different rates of tax prevailing in different States and approved by Parliament for the purpose of Central sales tax is discriminatory or giving preference to one of the States the provisions of section 8 of the Central Sales Tax Act are to be held *intra vires* the Parliament. The differences in rates under section 8 do not materially affect the free flow of trade etc in the territory of India. None of the impugned provisions—sub-sections (2), (2-A) and (5) of section 8—has direct or immediate impact on inter-State trade and commerce.

Appeals from the Judgment and Order, dated the 7th April, 1967, of the Madras High Court in Writ Petition No. 836 of 1966 †

Bishan Narain, Senior Advocate, (*A. V. Rangam*, Advocate, with him), for Appellant.

M. R. M. Abdul Karim, K. Rajendra Choudhury and *K. R. Choudhury*, Advocates, for Respondent.

R Thiagarajan, Advocate, for Intervener No. 1.

R. Gopalakrishnan, Advocate, for Intervener No. 2.

A. N. Singh and *D. N. Gupta*, Advocates, for Intervener No 3

B R.L. Iyengar, Senior Advocate, (*R. N. Sachthey* and *S P Nayyar*, Advocates, with him), for Intervener No. 4.

B. Sen, Senior Advocate, (*G. S. Chatterjee*, Advocate for *P K. Bose*, Advocate, with him), for Intervener No. 5.

† (1967) 20 S.T.C. 150.

C. B. Agarwala, Senior Advocate, (*O.P. Rana*, Advocate, with him), for Intervener No. 6.

Lal Narain Sinha, Advocate-General, for the State of Bihar, (*R. K. Garg* and *S C. Agarwala*, Advocates of *M/s Ramamurthi & Co.*, and *Anil Kumar* and *S. P Singh*, Advocates, with him), for Intervener No 7.

Naunit Lal, Advocate, for Intervener No. 8

K. Baldev Mehta, Advocate, for Intervener No. 9.

M R K Pillai, Advocate, for Intervener No. 10.

The Court delivered the following Judgments

Shah, J (for himself, *Mitter* and *Vaidialingam, JJ.*) —In a proceeding for assessment of tax for 1963-64 under the Central Sales Tax Act, 1956, the Deputy Commercial Tax Officer rejected the contention of the assessee that a part of the turnover of his business in matches arose out of intra-State sale transactions at the assessee's depot at Ongole (in the State of Andhra Pradesh) to which depot the goods were despatched by him from his place of business in the State of Madras. The Deputy Commercial Tax Officer held that the goods were moved from " the godown stock " of the assessee in execution of contracts of sale with merchants outside the State of Madras, and on that account the turnover from sales was liable to tax under the Central Sales Tax Act. The assessee moved the High Court of Madras under Article 226 of the Constitution seeking a writ of *certiorari* quashing the order of assessment, on the grounds, that the provisions of the Central Sales Tax Act which permitted levy of tax at varying rates in different States were invalid, and that the transactions brought to tax were not in truth inter-State transactions. The High Court did not determine the nature of the transactions, but held that sub-section (2), (2-A) and (5) of section 8 of the Central Sales Tax Act, 1956, in operation at the relevant time imposed or authorised the imposition of varying rates of tax in different States on similar inter-State transactions, and the resultant inequality in the burden of tax affected and impeded inter-State trade, commerce and intercourse, and thereby offended Articles 301 and 303 (1) of the Constitution. The High Court rejected the plea of the assessee that section 9 (3) of the Act was *ultra vires* The State has appealed to this Court with certificate granted by the High Court against the order declaring sub-sections (2), (2-A) and (5) of section 8 of the Central Sales Tax Act, 1956, invalid.

A brief review of the developments in the law relating to imposition of tax on transactions of sale and its inter-relation with the constitutional provisions leading to the enactment of the Central Sales Tax Act, 1956, will facilitate appreciation of the competing views put forward before us at the Bar. The Government of India Act, 1935, by List II, Entry 48 of the Seventh Schedule conferred power exclusively upon the Provinces to legislate on the subject of " taxes on the sale of goods and on advertisement " In exercise of that power the Provincial Legislatures enacted sales tax laws for their respective Provinces acting on the principle of " territorial nexus ", and picked out one or more ingredients constituting a sale and made it or them the basis of imposing liability for tax. This exercise of taxing power by the Provinces led to multiple taxation of the same transaction by many provinces, the burden of tax falling ultimately on the consuming public

In order to remove this burden imposed upon the consumers, Article 286 was incorporated in the Constitution *inter alia* for the regulation of inter-State sales transactions. This Court in *The State of Bombay* v. *United Motors (India) Ltd* [1], held that under the Bombay Sales Tax Act (XXIV of 1952), sales effected in Bombay in respect of goods exported from the State were not taxable by the State of Bombay, but the importing State was competent to levy tax on transactions of sale in the course of inter-State trade or commerce on persons who were resident outside its territory, provided that the goods were delivered in the importing State for the pur-

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1. (1953) S C J. 373 : (1953) 1 M L J. 743 : (1953) S.C R 1069.

pose of consumption therein This decision made the dealer carrying on business in the exporting State amenable to the sales tax law of the importing State. The question was reconsidered by this Court in *Bengal Immunity Company Ltd* v. *State of Bihar*[1] The Court held that the sales or purchases made by an assessee which actually took place in the course of inter-State trade or commerce could not be taxed by any State until by law it was otherwise provided by Parliament. The Judgment in *Bengal Immunity Co 's case*[1], removed, by making inter-State sales immune from taxation, the difficulties till then experienced by the trading community, but the importing States which had imposed tax on inter-State sales by non-resident dealers, relying on the principle of the judgment in *United Motors case*[2], were faced with innumerable claims for restitution of the tax realized The President then promulgated Ordinance III of 1956 which was later replaced by the " Sales Tax Laws Validation Act VII of 1956 " with the object of restoring for the period specified in the Act the decision in *United Motors case*[2].

The problem of tax on inter-State sales was, in the meanwhile, examined by the Taxation Enquiry Commission. The report of the Commission led to the enactment of the Constitution (Sixth Amendment) Act, 1956. By that amendment Entry 92-A was added in Union List in the Seventh Schedule to the Constitution conferring power upon the Union to legislate in respect of " taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce"; and for Entry 54 in the State List, the following entry was substituted :

"Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of Entry 92-A of List I."

Explanation to clause (1) of Article 286 was omitted, and clauses (2) and (3) were substituted by fresh clauses · by the newly enacted clause (2) the Parliament was authorised by law to formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1), and by clause (3) it was enacted that any law of a State shall, in so far as it imposes or authorises the imposition of, a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify In Article 269 (1) clause (*g*) was added authorising the Government of India to collect tax on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce and making it obligatory upon the Government of India to assign the tax to the States in the manner provided in clause (2). By clause (3) it was enacted that :

" Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce."

In exercise of authority conferred by the Constitution (Sixth Amendment) Act, 1956, the Parliament enacted on 21st December, 1956, the Central Sales Tax Act, 1956, with a view to formulate principles (*a*) for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of import into or export from India ; (*b*) providing for the levy, collection and distribution of taxes on sales of goods in the course of inter-State trade or commerce ; (*c*) declaring certain goods to be of special importance in inter-State trade or commerce and specifying the restrictions and conditions to which State laws imposing taxes on the sale or purchase of such goods of special importance shall be subject By section 3 of the Act a definition of sale or purchase of goods said to take place in the course of inter-State trade or commerce was devised By section 4 conditions in which a sale or purchase of goods was to be deemed to have taken place outside a State were specified. By section 5 the conditions in which a

1. (1955) S C J 672· (1955) 2 M.L J. (S.C.) 168: (1955) 2 S.C.R 603.

2. (1953) S.C J. 373 . (1953) 1 M.L J. 743 : (1953) S C R. 1069.

sale or purchase of goods taking place in the course of import or export were specified. By Chapter III (sections 6 to 13) provisions were enacted for declaring a charge of tax on inter-State sales and for setting up machinery for levy of tax and incidental matters. Section 6 imposed a charge on all sales effected by a dealer in the course of inter-State trade or commerce during any year. By section 7 provision was made for registration of dealers. Section 8, insofar as it is material, and as amended by Act XXXI of 1958, read was follows :

" (1) Every dealer, who in the course of inter-State trade or commerce—

(*a*) sells to the Government any goods ; or

(*b*) sells to a registered dealer other than the Government goods of the description referred to in sub-section (3) :

shall be liable to pay tax under this Act, which shall be two per cent. of his turnover.

(2) The tax payable by any dealer on his turnover insofar as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within sub-section (1)—

(*a*) in the case of declared goods, shall be calculated at the rate applicable to the sale or purchase of such goods inside the appropriate State ; and

(*b*) in the case of goods other than declared goods, shall be calculated at the rate of seven per cent., or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher ;

and for the purpose of making any such calculation any such dealer shall be deemed to be a dealer liable to pay tax under the sale tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.

(2-A) Notwithstanding anything contained in sub-section (1) or sub-section (2), if under the sales tax law of the appropriate State the sale or purchase, as the case may be, of any goods by a dealer is exempt from tax generally or is subject to tax generally at a rate which is lower than two per cent. (whether called a tax or fee or by any other name), the tax payable under this Act on his turnover insofar as the turnover or any part thereof relates to the sale of such goods shall be nil, or, as the case may be, shall be calculated at the lower rate.

Explanation.—For the purpose of this sub-section a sale or purchase of goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law it is exempt only in specified circumstances or under specified conditions or in relation to which the tax is levied at specified stages or otherwise than with reference to the turnover of the goods.

(3) * * * *

(4) * * * *

(5) Notwithstanding anything contained in this section, the State Government may, if it is satisfied that it is necessary so to do in the public interest, by notification in the Official Gazette, direct that in respect of such goods or classes of goods as may be mentioned in the notification and subject to such conditions as it may think fit to impose, no tax under this Act shall be payable by any dealer having his place of business in the State in respect of the sale by him from any such place of business of any such goods in the course of inter-State trade or commerce or that the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) or sub-section (2) as may be mentioned in the notification."

By section 9 machinery was set up for levy and collection of tax and penalties. Insofar as it is material, it provided :

" (1) The tax payable by any dealer under this Act on sales of goods effected by him in the course of inter-State trade or commerce whether such sales fall within clause (*a*) or clause (*b*) of section 3 shall be levied and collected by the

Government of India in the manner provided in sub-section (3) in the State from which the movement of the goods commenced.

Provided * * * *

(2) * * * *

(3) The authorities for the time being empowered to assess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India and subject to any rules made under this Act, assess, collect and enforce payment of any tax, including any penalty, payable by a dealer under this Act in the same manner as the tax on the sale or purchase of goods under the general sales tax law of the State is assessed, paid and collected; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State, and the provisions of such law, including provisions relating to returns, appeals, reviews, revisions, references, penalties and compounding of offences, shall apply accoringly:

Provided * * * *

(4) The proceeds in any financial year of any tax, including any penalty, levied and collected under this Act, in any State (other than a Union territory) on behalf of the Government of India shall be assigned to that State and shall be retained by it; and the proceeds attributable to Union territories shall form part of the Consolidated Fund of India."

By Chapter IV (sections 14 and 15) provision was made for levy of tax at specially low rates on goods of special importance in inter-State trade or commerce. By section 14 certain goods were declared to be of special importance in inter-State trade or commerce, and by section 15, as amended by Act XXXI of 1958, it was provided:

"Every sales tax law of a State shall, insofar as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely:—

(*a*) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed two per cent of the sale or purchase price thereof, and such tax shall not be levied at more than one stage;

(*b*) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, the tax so levied shall not exceed two per cent. of the sale or purchase price subject to such conditions as may be provided in any law in force in that State"

The scheme of the Act was first to devise definitions of 'inter-State sales' and 'sales outside the State', and then to declare inter-State sales subject to tax, and to set up machinery for levying and collecting tax on those sales. Transactions in goods which were made subject to tax in the course of inter-State trade or commerce were classified into three broad categories—(1) transactions falling within section 8 (1) *i e*, all sales to Government, and sales to a registered dealer other than the Government of goods referred to in sub-section (3) of section 8; (2) transactions falling within section 8 (2) (*a*) *i e*, sales in respect of declared goods; and (3) transactions falling within section 8 (2) (*b*) *i e*, sales [not falling within (1)] in respect of goods other than declared goods Sales of goods in category (1) were declared liable at the relevant time to pay a tax of two per cent on the turnover. On sales of declared goods tax was to be calculated at the rate applicable to the sale or purchase of such goods inside the appropriate State. But by section 15 the tax payable under a State law in respect of any sale or purchase of declared goods inside the State was not to exceed two per cent. of the sale or purchase price thereof, and was not leviable at more than one stage On turnover from sale of goods not falling within categories (1) and (2) the rate was seven per cent or the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever was higher. But by sub-section (2-A) of section 8 it was provided that notwithstanding anything con-

tained in sub-section (1) or sub-section (2), if under the sales tax law of the appropriate State the sale or purchase, as the case may be, of any goods by a dealer is exempt from tax generally or is subject to tax generally at a rate which is lower than two per cent. of the tax payable under the Act on the turnover insofar as the turnover or any part thereof relates to the sale of such goods shall be nil, or as the case may be, shall be calculated at the lower rate There is a slight inconsistency between section 8 (2) and section 8 (2-A) If the rate of tax under the State law is less than two per cent by virtue of section 8 (2-A), even in respect of turnover falling within section 8 (2) (*b*), the rate of tax will not exceed the State rate ; if the State rate exceeds two per cent , tax at the rate of seven per cent. or of the State, whichever is higher, shall prevail But that has no bearing on the question under discussion.

Tax under the Act is payable by the seller. The State from which the movement of goods commences in the course of inter-State sale collects the tax as agent of the Central Government, and in the manner provided in sub-section (3) of section 9 By sub-section (4) of section 9 the proceeds in any financial year of any tax, including any penalty, levied and collected under the Act in any State (other than a Union Territory) on behalf of the Government of India are to be assigned to that State and are to be retained by it, and the proceeds attributable to Union Territories are to form part of the Consolidated Fund of India.

The Act and the constitutional provisions were intended to restrict the imposition of multiple taxation on a single inter-State transaction by different States, each State relying upon some territorial nexus between the State and the sale The tax though collected by the State under the Central Sales Tax Act was as an agent of the Central Government, it was, by sub-section (4) of section 9, enacted in implementation of the principle of assignment of tax set out in clause (2) of Article 269, assigned to the State which collected it.

This somewhat tortuous scheme of levying tax on inter-State transactions and making it available to the State which levied it, in effect countenances levy of different rates of tax on inter-State transactions in similar goods It is upon the prevalence of different rates of tax which, subject to adjustments, and incorporated in the Central Sales Tax Act, that the argument of the assessee is largely founded He contends—and his contention has found favour with the High Court—that the liability to pay tax on inter-State transactions, depending upon the rate of tax prevailing in the exporting State, hampers trade and commerce, by giving or authorising the giving of preference to one State over another or by making or authorising the making of discrimination between one State and another, and thereby violates the guarantee of freedom of trade, commerce and intercourse declared by Part XIII of the Constitution The assessee primarily relies upon Articles 301 and 303 (1) of the Constitution in support of his contention. Article 301 provides :

> " Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free "

This Article is couched in terms of the widest amplitude trade, commerce and intercourse are thereby declared free and unhampered throughout the territory of India The freedom of trade so declared is against the imposition of barriers or obstructions within the State as well as inter-State all restrictions which directly and immediately affect the movement of trade are declared by Article 301 to be ineffective The extent to which Article 301 operates to make trade, and commerce free has been considered by this Court in several case . In *Atiabari Tea Co Ltd* v *The State of Assam and others*[1], Gajendragadkar, J , speaking for himself and Wanchoo and Das Gupta, JJ. observed at page 860

> " .... .we think it would be reasonable and proper to hold that restrictions, freedom from which is guaranteed by Article 301, would be such restrictions as directly and immediately restrict or impede the free flow movement of trade."

1 (1961) 1 S.C.R. 809.

In *Automobile Transport (Rajasthan) Ltd* v *The State of Rajasthan and others*[1], the view expressed by Gajendragadkar, J, in *Atiabari Tea Co's case*[2], was accepted by the majority. Subba Rao, J, who agreed with the majority observed that the freedom declared under Article 301 of the Constitution of India referred to the right of free movement of trade without any obstructions by way of barriers, inter-State or intra-State, or other impediments operating as such barriers The same view was expressed in *Firm A T B. Mehtab Majid and Company* v *State of Madras and another*[3], by a unanimous Court It must be taken as settled law that the restrictions or impediments which directly and immediately impede or hamper the free flow of trade, commerce and intercourse fall within the prohibition imposed by Article 301 and subject to the other provisions of the Constitution they may be regarded as void

But it is said that by imposing tax on sales, no restriction hampering trade is imposed In the *Atiabari Tea Company's case*[2], Gajendragadkar, J., observed:

> " Taxes may and do amount to restrictions; but it is only such taxes as directly and immediately restrict trade that would fall within the purview of Article 301. The argument that all taxes should be governed by Article 301 whether or not their impact on trade is immediate or mediate, direct or remote, adopt, in our opinion, an extreme approach which cannot be upheld "

In a recent judgment of this Court in *The Andhra Sugars Ltd and another* v *The State of Andhra Pradesh and others*[4], Bachawat, J, speaking for the Court, after referring to the observations made by Gajendragadkar, J, in *Atiabari Tea Company's case*[2], observed.

> " This interpretation of Article 301 was not dissented from in *Automobile Transport (Rajasthan) Ltd.* v *State of Rajasthan*[1] Normally, a tax on sale of goods does not directly impede the free movement or transport of goods Section 21 is no exception It does not impede the free movement or transport of goods and is not violative of Article 301."

Section 21 of the Andhra Pradesh Sugar Cane (Regulation of Supply and Purchase) Act which was referred to in the judgment authorised the State Government to levy a tax at such rate not exceeding five rupees per metric tonne as may be prescribed on the purchase of cane required for use, consumption or sale in a factory. It must, therefore, be regarded as settled law that a tax may in certain cases directly and immediately restrict or hamper the flow of trade, but every imposition of tax does not do so.

Tax under the Central Sales Tax Act on inter-State sales, it must be noticed, is in its essence a tax which encumbers movement of trade or commerce, since by the definition in section 3 of the Act a sale or purchase of goods is deemed to take place in the course of inter-State trade or commerce, if it—(*a*) occasions the movement of goods from one State to another, (*b*) is effected by a transfer of documents of title to the goods during their movement from one State to another The question which then falls to be determined is whether the tax imposed in the present case is saved by the operation of the other provisions of Part XIII Article 302 of the Constitution provides that Parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest Thereby the Parliament is, notwithstanding the protection conferred by Article 301, authorised to impose restrictions on the freedom of trade, commerce or intercourse in the public interest The expression " between one State and another " does not imply that it is only intended to confor upon the Union Parliament the power to remove the fetter upon legislative authority only so as to keep trade, commerce or intercourse free between one State Government and another. It is intended to declare

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1 (1963) 1 S C R 491.
2 (1951) 1 S C R. 809
3 (1964) 1 An W R (S C) 115 · (1964) 1 M L J (S C) 115 (1964) 1 S C J 355 (1963) 2 S C R (Supp) 435
4. (1968) 1 S C J 694 (1968) 1 M.L J. (S C) 117 (1968) 1 An W R· (S C) 117

trade, commerce and intercourse free between residents in one State and residents in another State. That is clear because Article 302, expressly provides that on the freedom of trade restrictions may be imposed not only as between one State and another, but also within any part of the territory of India As we have already observed, Article 301 does not merely protect inter-State trade or operate against inter-State barriers: all trade is protected whether it is intra-State or inter-State by the prohibition imposed by Article 301, and there is nothing in the language or the context for restricting the power of the Parliament which it otherwise possesses in the public interest to impose restrictions on the freedom of trade, commerce or intercourse, operative only as between one State and another as two entities. There is also no doubt that exercise of the power to tax may normally be presumed to be in the public interest.

Article 303 provides, by the first clause.

> " Notwithstanding anything in Article 302, neither Parliament nor the Legislature of a State, shall have power to make any law giving, or authorising the giving of, any preference to one State over another, or making, or authorising the making of, any discrimination between one State and another, by virtue of an entry relating to trade and commerce in any of the Lists in the Seventh Schedule."

Having conferred by Article 302, power upon the Parliament to impose restrictions upon freedom of trade, commerce or intercourse, the Constitution proceeds to impose certain restrictions upon the power so conferred. Reference to the power of the State Legislatures in Article 303 (1) creates a complication which we are not called upon in the present case to resolve. It is expressly declared that the Parliament shall not have the power to make any law giving preference to one State over another, authorising the giving of any preference to one State over another, making any discrimination between one State and another, and authorising the making of any discrimination between one State and another, in exercise of or by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule.

It was contended on behalf of the State that the power under Article 303 could only be exercised so as to restrict the authority of the Parliament which arises by virtue of an entry relating to trade and commerce in the Legislative Lists and that an entry with respect to the levy of tax on trade and commerce is not an entry relating to trade and commerce and therefore there is no prohibition against the Parliament exercising power or authorising the giving of any preference to one State over another or making or authorising the making of any discrimination between one State and another by the exercise of taxing power. Reliance in support of that contention was placed upon the judgment in *Sundararamier and Company* v. *State of Andhra Pradesh*[1], in which Venkatarama Aiyar, J., pointed out that under the scheme of entries in Lists I and II of the Seventh Schedule the power of taxation exercisable in respect of any matter is a power distinct from the power to legislate in respect of that matter. It was also urged that the expression " any entry relating to trade and commerce in any of the Lists in the Seventh Schedule" was restricted to the entries which expressly deal with the power to legislate in respect of trade and commerce *i e*, Entries 41 and 42 of List I, Entries 26 and 27 of List II and Entry 33 of List III in the Seventh Schedule, and extended to no other On the other hand it was contended that all legislative entries which directly affect trade and commerce are also within the expression " entry relating to trade and commerce "

We need express no opinion on the two questions argued before us The question whether entries relating to trade and commerce in the List in the Seventh Schedule are restricted to Entries 41 and 42 of List I, Entries 26 and 27 of List II and Entry 33 of List III, or relate to all general entries which affect trade and commerce, is academic in the present case. Nor do we think it necessary to decide whether for the purpose of Article 303 entries relating to tax on sale or purchase of goods *i.e.*,

1. (1958) S.C J 459: (1958) 1 An.W.R. (S.C.) 179: (1958) 1 M L J (S.C.) 179: (1958) S.C R. 1422.

Entry 92-A of List I, and Entry 54 of List II are entries relating to trade and commerce, for, in our opinion, an Act which is merely enacted for the purpose of imposing tax which is to be collected and to be retained by the State is not a law giving, or authorising the giving of, any preference to one State over another, or making, or authorising the making of, any discrimination between one State and another, merely because of varying rates of tax prevailing in different State

It was urged that the High Court was right in holding that rates of tax on the sale of the same or similar commodity by different States by itself was discriminatory, since it authorised placing of an unequal burden on inter-State trade and commerce, affecting its free flow between the States The rates of tax prevailing in different States on transactions of sale in the diverse commodities are undoubtedly not uniform According to the High Court such a scheme was " obviously quite discriminatory and considerably affected the freedom of trade, commerce and inter-course", the differential rates or exemptions in various States imposing an unequal burden on the same or similar goods which affected their free movement or flow in inter-State trade and commerce, and that a higher rate of tax in a State worked as a barrier to the free movement of similar goods to another State where there was no tax or a lower rate of tax, and for trade in particular goods declared or undeclared to be free throughout the territory of India, the rate of tax or exemption, as the case may be, must be uniform. We are unable to accept the view propounded by the High Court The flow of trade does not necessarily depend upon the rates of sales tax: it depends upon a variety of factors, such as the source of supply, place of consumption, existence of trade channels, the rates of freight, trading facilities, availability of efficient transport and other facilities for carrying on trade. Instances can easily be imagined of cases in which notwithstanding the lower rate of tax in a particular part of the country goods may be purchased from another part, where a higher rate of tax prevails Supposing in a particular State in respect of a commodity, the rate of tax is 2 per cent but if the benefit of that low rate is offset by the freight which a merchant in another State may have to pay for carrying that commodity over a long distance, the merchant would be willing to purchase the goods from a nearer State, even though the rate of tax in that State may be higher Existence of long-standing business relations, availability of communications, credit facilities and a host of other factors—natural and business—enter in to the maintenance of trade relations and the free flow of trade cannot necessarily be deemed to have been obstructed merely because in a particular State the rate of tax on sales is higher than the rates prevailing in other States.

In *The King* v. *Barger*[1], the Australian High Court was called upon to deal with the meaning of the expression " discrimination between States or parts of States " used in section 51 of the Australian Constitution Isaacs, J , observed at page 108.

> " .. . . the pervading idea is the preference of locality merely because it is locality, and because it is a particular part of a particular State It does not include a differentiation based on other considerations, which are dependent on natural or business circumstances, and may operate with more or less force in different localities, and there is nothing in my opinion, to prevent the Australian Parliament, charged with the welfare of the people as a whole, from doing what every State in the Commonwealth has power to do for its own citizens, that is to say, from basing its taxation measures on considerations of fairness and justice, always observing the constitutional injunction not to prefer States or parts of States."

In *W. R Moran Proprietor Ltd.* v *The Deputy Federal Commissioner of Taxation* (*N. S. W*) *and others*[2], the Judicial Committee of the Privy Council recorded its approval to that exposition. It is true that the Judicial Committee was interpreting section 51 (*ii*) of the Australian Constitution. It also appears from the provisions of the Australian Constitution that by virtue of section 96 of the Constitution there is to be

1. (1908) 6 Com L R. 41. 2 (1940) 63 Com L.R. 338.

a uniform imposition of customs duties. But the observations made by Isaacs, J., in *King* v *Barger*[1], and approved by the Judicial Committee are useful in the determination of the true principle applicable in the present case, that, it is where differentiation is based on considerations not dependent upon natural or business factors which operate with more or less force in different localities that the Parliament is prohibited from making a discrimination

The rates of tax in force at the date when the Central Sales Tax Act was enacted have again not become crystallised The rate which the State Legislature determines, subject to the maximum prescribed for goods referred to in section 8 (1) and (2) are the operative rates for those transactions in respect of transactions falling within section 8 (2) (*b*) the rate is determined by the State rate except where the State rate is between the range of two and seven per cent The rate which a State Legislature imposes in respect of inter-State transactions in a particular commodity must depend upon a variety of factors A State may be led to impose a high rate of tax on a commodity either when it is not consumed at all within the State, or if it feels that the burden which is falling on consumers within the State will be more than off set by the gain in revenue ultimately derived from outside consumers The imposition of rates of sales tax is normally influenced by factors political and economic If the rate is so high as to drive away prospective traders from purchasing a commodity and to resort to other sources of supply, in its own interest the State will adjust the rate to attract purchasers Again, in a democratic constitution political forces would operate against the levy of an unduly high rate of tax The rate of tax on sales of a commodity may not ordinarily be based on arbitrary considerations, but in the light of the facility of trade in a particular commodity, the market conditions internal and external—and the likelihood of consumers not being scared away by the price which includes a high rate of tax. Attention must also be directed to sub-section (5) of section 8 which authorises the State Government, notwithstanding anything contained in section 8 in the public interest to waive tax or impose tax on sales at a lower rate on inter-State trade or commerce It is clear that the Legislature has contemplated that elasticity of rates consistent with economic forces is clearly intended to be maintained.

Prevalence of differential rates of tax on sales of the same commodity cannot be regarded in isolation as determinative of the object to discriminate between one State and another. Under the Constitution as originally framed, revenue from sales tax was reserved to the States But since the power of taxation could be exercised in a manner prejudicial to the larger public interests by the States, it was found necessary to restrict the power of taxation in respect of transactions which had an inter-State content. Amendment of Article 286 and the enactment of the Sales Tax Validation Act, 1956, and the Central Sales Tax Act, 1956, were all intended to serve a dual purpose; to maintain the source of revenue from sales tax to the States and at the same time to prevent the States from subjecting transactions in the course of inter-State trade so as to obstruct the free flow of trade by making commodities unduly expensive The effect of the Constitutional provisions achieved in a somewhat devious manner is still clear, *viz.*, to reserve sales-tax as a source of revenue for the States. The Central Sales Tax Act is enacted under the authority of the Union Parliament, but the tax is collected through the agency of the State and is levied ultimately for the benefit of the States and is statutorily assigned to the States That is clear from the amendments made by the Constitution (Sixth Amendment) Act, 1956, in Article 269, and the enactment of clauses (1) and (4) of section 9 of the Central Sales Tax Act The Central sales tax though levied for and collected in the name of the Central Government is a part of the sales tax levy imposed for the benefit of the States. By leaving it to the States to levy sales-tax in respect of a commodity on intra-State transactions no discrimination is practised, and by authorising the State from which the movement of goods commences to levy on transactions of sale Central sales tax, at rates prevailing in the State, subject to the limitation already set out, in our judgment, no discrimination can be deemed to be practised.

1. (1908) 6 Com. L R. 41.

The view taken by the High Court was largely influenced by two cases decided by this Court on the interpretation of Article 304 (*a*) In *Firm A T B Mehtab Majid & Co's case*[1], this Court struck down the levy of tax on sales of tanned hides and skins imported from outside the State of Madras at a rate higher than the rate of tax on sales of hides and skins tanned and sold within the State of Madras as infringing Article 304 (*a*) By rule 16 framed under section 19 of the Madras General Sales Tax Act, it was provided that in the case of untanned hides and skins the tax under section 3 (1) of the Madras General Sales Tax Act, shall be levied from the dealer who is the last purchaser in the State not exempt from tax under section 3 (3) on the amount for which they are bought by him By rule 16 (2) it was provided that—(*i*) in the case of hides or skins which had been tanned outside the State the tax under section 3 (1) shall be levied from the dealer who in the State is the first dealer in such hides or skins not exempt from tax under section 3 (3) on the amount for which they are sold by him, and (*ii*) in the case of tanned hides or skins which had been tanned within the State, the tax under section 3 (1) shall be levied from a person who is the first dealer in such hides or skins not exempt from tax under section 3 (3) on the amount for which they are sold by him The taxpayer contended in *Firm A T B Mehtab Majid's case*[1], that the tanned hides and skins imported from outside and sold inside the State were under rule 16 of the Madras General Sales Tax Rules subjected to a higher rate of tax than the rate imposed on hides and skins tanned and sold within the State and this discriminatory system of taxation offended Article 304 (*a*) of the Constitution This Court accepted the contention and held that rule 16 (2) discriminated against imported hides or skins which had been purchased or tanned outside and therefore it contravened Article 304 (*a*) of the Constitution.

Similarly in *A Hajee Abdul Shakoor & Co.* v. *State of Madras*[2], the assessees who were dealers in skins in the State of Madras, purchased raw skins from places both within and outside the State of Madras. They were assessed to sales-tax in accordance with the provisions of the Madras General Sales Tax (Turnover and Assessment) Rules, on the turnover of hides and skins purchased in the untanned condition outside the State and tanned within the State with respect to the assessment years, 1955-56, 1956-57 and 1957-58 The tax was assessed at 3 pies per rupee on the price of tanned hides and skins for the years 1955-56 and 1956-57 and at the rate of 2 per cent. on the turnover for the year 1957-58. In petitions filed by the assessees in this Court under Article 32 of the Constitution it was held that section 2 (1) of the Madras General Sales Tax (Special Provisions) Act, 1963, discriminated against imported hides and skins which were sold upto 1st August, 1957, upto which date the tax on sale of raw hides and skins was at the rate of 3 pies per rupee and was therefore void.

In the two cases the differential treatment violated Article 304 (*a*) of the Constitution, which authorises the Legislature of a State notwithstanding anything in Articles 301 and 303 by law to impose on goods imported from other States or the Union Territories any tax to which similar goods manufactured or produced in that State are subject, so, however, "as not to discriminate between goods so imported and goods so manufactured or produced;". Imposition of differential rates of tax by same State on goods manufactured or produced in the State and similar goods imported in the State is prohibited by that clause But where the taxing State is not imposing rates of tax on imported goods different from rates of tax on goods manufactured or produced, Article 304 (*a*) has no application. Article 303 prohibits the making of law which gives, or authorises the giving of, any preference to one State over another, or makes, or authorises the making of, any discrimination between one State and another Prevalence of different rates of sales tax in the S ate which have been adopted by the Central Sales Tax Act for the purpose of levy of tax under that Act is, as already mentioned, not determinative of the giving of

1 (1964) 1 An W R (S C) 115 (1964) 1 M L J (S C) 115 (1964) 1 S C J 355 . (1963) 2 S.C R (Supp) 435.

2 (1965) 1 S C J. 337 : (1965) 1 M L J. (S C) 39 (1965) 1 An W R (S.C) 39 · (1954) 8 S.C.R 217.

preference or making a discrimination. The view expressed by the High Court that sections 8 (2), 8 (2-A) and 8 (5) infringe Article 301 and Article 303 (1) cannot be sustained.

It was contended before the High Court that whereas excise duty was not liable to be included in the turnover of goods under the Madras General Sales Tax Act, it was liable to be included in the turnover for the purpose of Central Sales Tax Act. The High Court in making a general discussion on this question observed, following the judgment of this Court in *State of Mysore* v. *Lakshminarasimhiah Setty and Sons*[1], that by " levied " in section 9 (1) of the Central Act, what was meant was " levied as under the State Act ", that would include also the State Rules enabling deductions in the computation of the turnover. The Court rejected the contention that:

> " to the extent the excise duty is not deductible from taxable turnover under the Central Act unlike under the Madras General Sales Tax Act, there is discrimination .. ..between one State and another".

They observed that:

> " In the matter of non-deductibility of excise duty from the turnover of inter-State sales, the Central Act has equal application and makes no discrimination. The Central Act does not say that excise duty will be deductible in one State and not in another It is not deductible from the turnover of the inter-State sales and this rule is uniformly applied to all inter-State sales There is, therefore, no question of inequality of discrimination forbidden by Article 303 (1) and there is no question of contravention of Article 301 either."

But in dealing with the case of the assessee in the last paragraph of the judgment, the High Court observed that since no provision had been made for deduction of the excise duty from the turnover of inter-State sales or purchases under the Central Act with the result that unequal burden will fall on differences in the quantum of turnover because of allowance in the one case and disallowance in another, of deduction of excise duty This in the view of the High Court would impede the freedom of inter-State trade, commerce and intercourse within the meaning of Article 301 of the Constitution and was not saved by Article 303 The observations so made, somewhat blur the earlier discussion If under the Madras General Sales Tax Act in computing the turnover the excise duty is not liable to be included and by virtue of section 9 (1) of the Central Sales Tax Act, tax has to be levied in the same manner as under the Madras General Sales Tax Act, the excise duty will not be liable to be included in the turnover, and the observations made in the last paragraph of the judgment under appeal that because no express provision was made for exclusion of the excise duty in the computation of turnover from inter-State sales or purchases there was discrimination cannot be accepted as correct We are of the view that in the matter of determining the taxable turnover the same rules will apply by virtue of section 9 (1) of the Central Sales Tax Act, whether the tax is to be levied under the Central Sales Tax Act or the General Sales Tax Act.

The High Court proceeded to determine the case before them only on the plea that the impugned provisions of the Act were *ultra vires* They did not consider whether the transactions in dispute were inter-State transactions and liable to tax in the hands of the assessee in the Madras State. It is the case of the assessee that he has been taxed in the Andhra Pradesh State by the appropriate authority in respect of the transactions of sale of goods which are sought to be taxed, on the footing that the transactions were intra-State transactions The question whether the transactions were intra-State and were liable to be taxed under the Madras General Sales Tax Act has not been determined The case must therefore be remanded to the High Court. The High Court will proceed to decide the question Since the assessee moved the High Court by a writ petition against the order of the sales tax authorities without filing an appeal before the authority competent to deal with the questions of fact, it will be open to the High Court to require the assessee to have those questions determined by the competent departmental authority

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1. (1965) 16 S.T.C. 231: (1965) 2 S.C.R. 129.

The appeal will be allowed and the order passed by the High Court declaring the provisions of sections 8 (2), 8 (2-A) and 8 (5) *ultra vires* must be set aside.

The petition out of which this appeal arises was one of a group of petitions filed before the High Court Against orders passed in favour of the other assessees the State has not preferred appeals. The amount involved in the claim is small The State apparently has approached this Court with a view to obtain a final determination of the important question which was raised in the petitions filed before the High Court We therefore di ect that there will be no order as to costs in this Court and in the High Court

Bachawat, J —I have read the draft judgment prepared by our learned brother Justice Shah He has said that tax under the Central Sales Tax Act on inter-State sales is in its essence a tax hampering movement of trade or commerce, since by the definition in section 3 of the Act a sale or purchase of goods is deemed to take place in the course of inter-State trade or commerce, if it (*a*) occasions the movement of goods from one State to another , or (*b*) is affected by a transfer of documents of title to the goods during their movement from one State to another He is of the view that the tax falls within the prohibition imposed under Article 301 of the Constitution

In *Atiabari Tea Co , Ltd.* v. *The State of Assam*[1], Gajendragadkar, J , speaking for the majority of the Court said —

" We are, therefore, satisfied that in determining the limits of the width and amplitude of the freedom guaranteed by Article 301 a rational and workable test to apply would be. Does the impugned restriction operate directly or immediately on trade or its movement . It is the free movement of the transport of goods from one part of the country to the other that is intended to be saved, and if any Act imposes any direct restrictions on the very movement of such goods it attracts the provisions of Article 301, and its validity can be sustained only if it satisfies the requirements of Article 301 or Article 304 of Part XIII "

This interpretation of Article 301 was not dissented from in *Automobile Transport (Rajasthan) Ltd* v *State of Rajasthan*[2] In *The Andhra Sugars Ltd* v *The State of Andhra Pradesh and others*[3], this Court rejected the contention that section 21 of the Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1961 (Andhra Pradesh Act (XLV of 1961) did not offend Article 301. The Court held :

" Normally, a tax on sale of goods does not directly impede the free movement or transport of goods Section 21 is no exception It does not impede the free movement or transport of goods and is not violative of Article 301 ".

This Court distinguished the case of *Firm A T Mehtab Majid* v *State of Madras*[4], which decided that a sales tax which discriminated against goods imported from other States might affect the free flow of trade and would then be invalid unless protected by Article 304 (*a*) It is implied in Article 304 (*a*) that a discriminatory tax might affect freedom of trade

On principle I see no distinction between a tax on intra-State and a tax on inter-State sales An intra-State sale may occasion the movement of goods from one part of the State to another part of the same State Indeed, normally, an intra-State sale would occasion such movement, because the purchaser has to move the goods from the seller's place to some other place. An intra-State sale may also be effected by a transfer of documents of title to the goods during their movement from one part of the State to another part of the same State But, there can be no doubt that a tax on such sales would not normally offend Article 301 That Article makes no distinction between movement from one part of the State to another part of the same State and movement from one State to another. Now, if a tax on intra-State sale does not offend Article 301, logically, I do not see how a tax on inter-State sale can do so.

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1 (1961) 1 S C R 809, 860-861
2 (1963) 1 S C R 491, 533
3 (1968) 1 S C J 694 (1968) 1 M L J. (S C.) 117 (1968) 1 An W R. (S C.) 117.
4 (1963) 2 S C R (Supp) 435 (1964) 1 An. W R (S C) 115 (1964) 1 M L J (S C) 115 : (1964) 1 S C J 355

Neither tax operates directly or immediately on the free flow of trade or the free movement of the transport of goods from one part of the country to the other. The tax is on the sale. The movement is incidental to and a consequence of the sale.

In *The Bengal Immunity Company Ltd.* v. *State of Bihar*[1], Jagannadhadas, J., after referring to Article 301 said:—

"Now it is not disputed that a tax on a purely internal sale which occurs as a result of the transportation of goods from a manufacturing centre within the State to a purchasing market within the same State is clearly permissible and not hit by anything in the Constitution. If a sale in that kind of trade can bear the tax and is not a burden on the freedom of trade, it is difficult to see why a single point tax on the same kind of sale where a State boundary intervenes between the manufacturing centre and the consuming centre need be treated as a burden, especially where that tax is ultimately to come out of the residents of the very State by which such sale is taxable. Freedom of trade and commerce applies as much within a State as outside it. It appears to me again, with great respect, that there is no warrant for treating such a tax as in any way contrary either to the letter or the spirit of the freedom of trade, commerce and intercourse provided under Article 301".

As at present advised, I am inclined to agree with these observations. I am, therefore, inclined to think that normally a law imposing a tax on intra-State sales does not offend Article 301. It seems to me that the Central Sales Tax Act, 1956 is no exception to this rule. None of its provisions directly impede the movement of goods or the free flow of trade.

I may add that even assuming that the Central Sales Tax Act, 1956 is within the mischief of Article 301, it is certainly a law made by Parliament in the public interest and is saved by Article 302. I find nothing in the Act which offends Article 303 (1).

The decision of the High Court that sections 8 (2), 8 (2-A), and 8 (5) of the Central Sales Tax Act, 1956, are *ultra vires* the Constitution must therefore be set aside. I agree to the order proposed by Shah, J.

Hegde, J.—Though I agree with the conclusions reached by my learned brother Shah, J., namely, sections 8 (2), 8 (2-A) and 8 (5) of the Central Sales Tax Act, 1956 (LXXIV of 1956)—hereinafter referred to as the Act—are *intra vires* the Constitution, my reasons for coming to that conclusion are not the same as his. Hence this note.

The facts of the case as well as the history of the legislation are fully set out in the majority judgment. It is settled by the decisions of this Court in *Atiabari Tea Co., Ltd.* v. *The State of Assam*[2], and *the Automobile Transport (Rajasthan) Limited* v. *The State of Rajasthan*[3], that a taxing statute is not outside the scope of Article 301 of the Constitution. But before a taxing statute is held to be violative of that Article, it must be shown that it has a direct or immediate impact on the freedom of trade, commerce and intercourse within the country. In other words, a mere remote or incidental impact is insufficient to hold that Article 301 has been contravened. Article 302 empowers Parliament by law to impose such restrictions on the freedom of trade, commerce and intercourse between one State and another or within any part of the territory of India, as may be required in the public interest. The power conferred on Parliament is extremely wide and the only limitation placed on that power by Article 302 is that the law in question must be required in the public interest. Primarily it is for Parliament to determine the requirements of public interest. The decision of Parliament in this regard is not easy to challenge. Parliament is presumed to know the needs of the people, the requirements of the time and the economic and political interests of the country as a whole. By its very composition it is unlikely that Parliament would have regional bias or would adopt a parochial approach. In addition, there is the presumption of the constitutionality of a statute. Therefore

1. (1955) 2 S.C.R. 603 at p. 754 : (1955) S.C.J. 672 : (1955) 2 M.L.J. (S.C.) 168.
2. (1961) 1 S.C.R. 809.
3. (1963) 1 S.C.R. 491.

the State undoubtedly starts with an advantage. But once it is shown that a measure *prima facie* gives preference to the residents of one State over another State or it makes discrimination between the residents of a State and that of another because of the adoption of different rates of tax in different States, then the matter assumes a different complexion in view of Article 303 (1) It should be within the knowledge of the Union Government why Parliament adopted different rates in different States. I agree that mere difference in rates is neither showing preference nor making discrimination But other things being equal, the difference in rates would result in showing preference to some States and making discrimination against others Hence, in my opinion, difference in rates is a *prima facie* proof of the preference or discrimination complained of. It is for the State to justify those differences. The real question for decision is whether the impugned provisions have given or authorised the giving of any preference to one State over another or made or authorised the making of any discrimination between one State and another. The word "State" in Article 301 is used in the sense of people residing in that State It is impossible for any ordinary person to establish positively the preference or the discrimination complained of, apart from showing the difference in the rates. Once he shows the difference in the rates, it is for the State to show that the same has not resulted in showing preference to one or more States over others or making discrimination against one or more States over others in the matter of inter-State trade I am not prepared to place an interpretation on Article 303 (1) which would render that provision purposeless After all it is the State that had enacted the impugned provisions. It must have had good reasons for enacting those provisions It must place before Court those reasons and satisfy it that Article 303 (1) has not been contravened But on the material placed before us, I am satisfied that the differences in the rates are in public interest and those differences do not materially affect the free flow of trade in the country.

From the history of the legislation, it is clear that the subject of taxing inter-State sales is a complicated process It has various facets Sales-tax is one of the most important sources of revenue for the States It was so even under the Government of India Act, 1935. It was not the intention of Parliament either to dry up that source or to divert the same It wanted to retain that source for the States ; but at the same time guard against States levying sales tax on inter-State sales in a manner which is likely to be prejudicial to the free flow of trade and commerce in the country Constitutional amendments referred to in the judgment of Shah, J , have an important purpose behind them. Same is the case as regards the provisions in the Act. Before Articles 269 and 286 were amended and the Act enacted, a Committee known as Taxation Enquiry Committee, had gone into the various aspects of inter-State trade and commerce and made recommendations to the Union Government on that subject It was largely on the basis of those recommendations that Articles 269 and 286 of the Constitution were amended and the Act enacted Therefore it is clear that the Act is not a haphazard legislation , it is the product of deep thinking and clear analysis of the various aspects of the matter. This Court will be slow to hold such a measure as being either not in public interest or as violative of Article 303 (1). The question of giving preference or making discrimination depends on various facts and circumstances, the tax rate, being only one of them The views of an expert committee on a subject so complicated as tax on inter-State sales is entitled to great weight In the very nature of things, it is difficult for Courts to ascertain the various factors that impede the free flow of trade or to assess their importance. This is not the same thing as saying that this Court should abdicate its functions in favour of an expert committee or should unduly exaggerate the importance of the collective knowledge and wisdom of the members of Parliament. But the fact remains that in assessing the strength of economic forces in a given matter the views of persons who may be expected to be familiar with the subject is entitled to weight and in the absence of clear proof to the contrary or unless it is shown that their conclusions are obviously wrong, it will be proper for this Court to proceed on the basis that the conclusions reached by them on facts—not on questions of law—are correct. The Taxation Enquiry Committee has given good reasons in support of its recommendations.

We shall now examine the purposes behind section 8 of the Act, which fixes rates of tax on sales in the course of inter-State trade, commerce and intercourse. The Act divides inter-State sales into four categories, namely—(*i*) sales to Government, (*i*) sales of goods which are declared to be of special importance in the inter-State trade and commerce, (*i i*) sales to registered dealers, and (*iv*) sales to others. Good many sales in the course of inter-State sales are made to Governments In a welfare State like ours, public sector is in-charge of various industries, which require raw material from various parts of the country. The Governments also require consumer goods of various types for its governmental functions as well as for its economic activities. A uniform rate is fixed for those sales under section 8 (1) (*a*). Hence in respect of an important segment of inter-State sales the rate is uniform, no doubt subject to section 8 (2-A), the scope of which I shall discuss a little later

Section 14 declares that goods enumerated therein are goods of special importance in the inter-State trade and commerce. Section 15 prescribes the restrictions and conditions under which sales tax in respect of the turnover relating to those goods may be levied One of the conditions prescribed at the relevant time was that tax should not be more than two percentum of the turnover Further in respect of those goods only a single point taxation is permissible. The declared goods constitute a large portion of the goods sold in inter-States trade The incidence of taxation on those goods is such that it could not have had any serious repercussion in inter-State trade.

Section 8 (i) (*b*) regulates the sales tax leviable on sales to registered dealers in the course of inter-State sales The maximum rate fixed at the relevant time was two percentum of the turnover All that the registered dealer has to do is to get included in his certificate of registration goods of the class or classes which he proposes to purchase as being intended for re-sale by him or for use by him in the manufacture or processing goods for sale or in the mining or in the generation or distribution of electricity or any other form of power Here again the incidence of taxation is so low as ordinarily not to affect the free flow of trade.

This takes us to the remaining sales in the course of inter-State trade or commerce By and large these sales are made to unregistered dealers Here again, so far as the declared goods are concerned, tax has to be levied at the rate ap li-cable to local sales, as provided in section 8 (2) (*a*) Then we come to clause (*b*) of section 8 (2), which deals with goods other than declared goods Here the law at the relevant time was that the tax shall be calculated at the rate of seven percentum of the turnover or as the rate applicable to sale or purchase of such goods inside the appr priate State, whichever is higher As could be seen from the report of the Taxation Enquiry Committee, the main reason for t is provision was to prevent as far as possible the evasion of sales tax The Parliament was anxious that inter-State trade should be canalised through registered dealers over whom the appropriate Government has a great deal of control It is not very easy for them to evade tax A measure which is intended to check the evasion of tax is undoubtedly a valid measure Further, inter-State trade carried on through dealers coming within section 8 (2), must be in the very nature of things very little It is n public interest to see that in the guise of freedom of trade, they do not evade the payment of tax. If the sales tax they have to pay is as high or even higher than intra-State sales tax then they will be constrained to register themselves and pay the tax legitimately due. The impact of this provision on inter-State trade is bound to be negligible, but at the sametime it is an effective safeguard against evasion of tax.

Section 8 (2-A) is incorporated with a view to see that the consumers in the States to which goods are imported are not placed at a disadvantage as compared to the consumers in the State from which the goods are imported In fact this provivision is bound to facilitate inter-State trade The purpose behind this section is to see that the State Governments do not place the local consumers in a better position than the consumers outside.

Sub-section (5) of section 8 provides for giving individual exemptions in public interest. Such a power is there in all taxation measures. It is to provide for un-

foreseen contingencies. Take for example, when there was famine in Bihar, if a dealer in Punjab had undertaken to sell goods to a charitable society in that State at a reasonable price for distribution to those who were starving, it would have been in public interest if the Punjab Government had exempted that dealer from paying sales tax Such a power cannot immediately or directly affect the free flow of trade. The power in question cannot be said to be bad. If there is any misuse of that power, the same can be challenged.

It must be remembered that under the present conditions the power to tax is not merely used for the purpose of collecting revenue, it is a powerful social instrument, in particular an instrument which can be effectively used for correcting economic maladjustments While the Legislature must provide in the law for all reasonably foreseeable contingencies, still some discretionary power has to be given to the Executive to meet unexpected situations

If we bear in mind the fact that sales tax on inter-State sales is levied for the benefit of the States and the further fact that each one of the State Governments in its own interest is bound to create the best possible condition for the growth of industry and commerce in that State, it is reasonable to assume that they will not be blind to economic forces All that one has to guard against is to see that they do not, by having recourse to their taxation power, obstruct the flow of trade into their State. In the normal course they will be interested in seeing that goods produced in their States are sold outside. Reasonably sufficient safeguards against the free flow of trade into a State have been provided by the provisions of the Act, firstly, by providing for the levy of sales tax in the State in which the goods are produced, and, secondly, by placing various restrictions on the power of the States in fixing the rates.

None of the impugned provisions, in my opinion, has direct or immediate impact on inter-State trade or commerce.

K.G S ——— *Appeal allowed order set aside.*

THE SUPREME COURT OF INDIA

(Civil Appellate Jurisdiction.)

PRESENT .—K SUBBA RAO, RAGHUBAR DAYAL AND J. R MUDHOLKAR, JJ

Sri Rani M Vijayalakshmamma Rao Bahadur, Ranee of Vuyyur . *Appellant**

v

The Collector of Madras . *Respondent.*

Land Acquisition Act (I of 1894), sections 4 and 23—Compulsory acquisition—Compensation—Market value of land—Sales of similar lands in the locality—Highest value fetched and not the average thereunder—Deduction of betterment levy under Town Planning Act.

The High Court of Madras in an appeal as to determination of the market value (under section 23 of the Act) held that the average of the prices fetched under the sales relied on by the Governments shall be the market value and betterment levy payable under section 25 of the Town Planning Act has to be provided for On appeal to the Supreme Court,

Held: It seems to be only fair that the highest value shown in the sale deeds relied on by Government should be preferred to the rest unless there are strong circumstances justifying a different course There is no reason why an average of the sale deeds should have been taken in the instant case.

Betterment levy is a charge on the land under section 25 of the Town Planning Act and deductions have to be made on that account in fixing compensation payable

Appeal from the Judgment and Decree dated 21st November, 1957 of the Madras High Court in A S No 831 of 1953

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* C A. No 410 of 1962. 24th April, 1963.

P Ram Reddy, for Appellant.

A. V Rangam, for Respondent

The Judgment of the Court was delivered by

Mudholkar, J —By a notification under section 4 of the Land Acquisition Act 1894 (I of 1894), dated 14th September, 1948 the Government of Madras decided to acquire 1,145 grounds of land comprised in an area roughly bounded by St Mary's Road on the north, by the Buckingham Canal in the east and south and by Chamier's Road and Pugh's Road on the west in the city of Madras The land belonged to various owners and the acquisition was for the purpose of constructing houses under the Town Planning Scheme which had already been settled Out of these lands 74 grounds belonged to the appellant The Land Acquisition Officer divided the lands to be acquired into five groups—Group I to Group V according to what he considered to be the best lands, the next best lands and so on In grading the lands in this manner, the Land Acquisition Officer bore in mind factors such as proximity to roads in existence, nearness to the Mylapore temple, the market, schools etc., level of land, its distance from the Buckingham Canal (which is said to stink a great deal) as well as distance from pits or ponds and so on. This grading has been accepted throughout and is not challenged before us What is, however, contended on behalf of the appellant is that her lands which are partly placed in Group III and partly in Group IV should all have been placed in Group III After dividing the lands into five groups the Land Acquisition Officer tentatively valued the lands in Group I at a particular figure and then made deductions from this figure for the purpose of valuing lands falling in different groups. This method, though deprecated by the Judge of Small Causes Court, before whom an application was made by the claimants challenging the award of the Land Acquisition Officer, was actually adopted by him in valuing the lands. What he, however, did was to give the claimants a little more than what the Land Acquisition Officer had given. In appeal, the High Court while adhering to the classification of lands, has chosen to follow a different principle in valuing lands falling in Group I What the High Court did was to take the average of the price ascertainable from two sale deeds, Exhibits R-19 and R-27 and then deduct from it a certain amount in respect of betterment levy In that way the High Court has regarded Rs. 1,450 as the appropriate rate for valuing lands in Group I According to it, the value of land in Group III would be at Rs. 1,400 per ground and Group IV at Rs 1,160 per ground On behalf of the appellant Mr Ram Reddy contends that in taking an average price the High Court was wrong and that it should have based the valuation of land in Group I on Exhibit R-19 alone. On that basis, according to him, the value of lands in Group III would work out at Rs. 1,900 per ground and that of lands in Group IV at Rs 1,700 per ground His second contention is that in fixing compensation, betterment levy under the Madras Town Planning Act (VII of 1920) should not have been deducted His third contention is that the appellant's lands should all have been placed in Group III.

It seems to us that there is substance in the first contention of Mr. Ram Reddy. After all when the land is being compulsorily taken away from a person, he is entitled to say that he should be given the highest value which similar land in the locality is shown to have fetched in a *bona fide* transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition It is not disputed that the transaction represented by Exhibit R-19 was a few months prior to the notification under section 4 that it was a *bona fide* transaction and that it was entered into between a willing purchaser and a willing seller. The land comprised in the sale deed is 11 grounds and was sold at Rs 1,961 per ground The land covered by Exhibit R-27 was also sold before the notification but after the land comprised in Exhibit R-19 was sold. It is true that this land was sold at Rs 1,096 per ground This, however, is apparently because of two circumstances One is that betterment levy at Rs 500 per ground had to be paid by the vendee and the other that the land comprised in it is very much more extensive, that is about 93 grounds or so. Whatever that may be, it seems to us to be only fair that where sale deeds

pertaining to different transactions are relied on behalf of the Government, that representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course In any case we see no reason why an average of two sale deeds should have been taken in this case

We agree, however, with the High Court that from the amount of Rs. 1,961 per ground certain deductions will have to be made in respect of betterment levy because under section 25 of the Town Planning Act betterment levy is a charge on the land as well as in respect of the value of a well and bunk said to be existing on the land comprised in Exhibit R-19

We, however, agree with the High Court in regard to the second contention raised by Mr Ram Reddy about upgrading the lands from Group IV to Group III and have nothing to add to the reasons given by it for rejecting a similar contention made before it on behalf of the appellant

For these reasons we allow the appeal in part and remit the matter to the High Court for refixing the value of the land in question with advertence to our remarks. In view of the fact that the appeal has only partly succeeded we direct that costs in this Court will be borne as incurred.

K G S. *Appeal allowed in part.*

THE SUPREME COURT OF INDIA.

(Civil Appellate Jurisdiction.)

PRESENT :—J. C. SHAH, V. RAMASWAMI AND A. N. GROVER, JJ.

The State of Madras .. *Appellant**

v.

M/s K. C. P. Ltd .. *Respondent.*

Central Sales Tax Act (LXXIV of 1956), section 2 (b)—' Dealer '—Main business, manufacture and sale of heavy machinery—Arc furnaces purchased for being installed in the foundry, found unsuitable for the purpose—Disposal thereof by sale 6 years later at a profit—If " dealer."

A person can be held to be a dealer, if he engages himself in a course of dealings, buying, selling and supplying goods and commodities with the object of making a profit

Where admittedly the arc furnaces were imported by a manufacturer and dealer in heavy machinery for the purpose of being installed in his foundry as part of the plant, and there was no evidence of any intention, at the time of purchase, of selling them at a profit and further it was not proved that arc furnaces were ever manufactured or sold by him, he can hardly be said to be a ' dealer ' within section 2 (*b*) of the Central Sales Tax Act and the sale proceeds of part of the fixed assets cannot be included in his total turnover

Appeal by the Special Leave from the Judgment and Order, dated the 22nd October, 1964 of the Madras High Court in Tax Case No. 197 of 1963 (Revision No. 126) †

A. K. Sen, Senior Advocate (*A V Rangam*, Advocate with him), for Appellant.

S. T. Desai, Senior Advocate (*T A. Ramachandran*, Advocate with him), for Respondent.

The Judgment of the Court was delivered by

Grover, J—This is an appeal by Special Leave in which the sole question for decision is whether the respondent-company was liable to pay sales tax on an amount

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† (1965) 16 S T C. 156.

*C A. No. 731 of 1966. 20th August, 1968.

of Rs 4,20,000 being the sale price of two are furnaces which had been purchased in 1952 and sold in 1958.

The respondent-company carried on business at 38, Mount Road, Madras, its main business being the manufacture and sale of machinery and parts of machinery and accessories For manufacturing parts of the machinery, the company maintained a foundry and in 1952 it purchased two arc furnaces for a sum of Rs 2,13,512-81 for the purpose of using the same in its foundry In the account books and the balance-sheet of the company these furnaces were shown under the heading "workshop equipment." According to the company the furnaces were found to be unsuitable for the purpose for which they had been purchased and therefore they were disposed of in 1958 to a purchaser in Calcutta for a sum of Rs 4,20,000 For the assessment year 1958-59 the assessing authorities sought to include the amount of Rs 4,20,000 in the turnover of the company although it was maintained by the company that the sale represented an isolated sale of its fixed capital assets. The appeal before the Sales Tax Appellate Tribunal, Madras, also failed. The view of the Tribunal may be stated in its own words :—

"It is not denied that the appellant comes within the scope of the definition of 'dealer' It has to be seen whether the sale of the two arc furnaces had a reasonable connection with the normal course of business of the assessee The fact that the appellant could not use them or that they are surplus machinery cannot take it out of the ambit of the appellant's business of sales of machinery or part of machinery The necessity to dispose of unwanted machinery is ingrained in the very nature of business of sale of machinery which the assessee was carrying on and it had to effect sales of such surplus materials"

A revision petition was presented to the High Court of Madras under section 38 of the Madras General Sales Tax Act (I of 1959) read with section 9 (3) of the Central Sales Tax Act, 1956 (Act LXXIV of 1956), hereinafter called the Madras Act and the Central Act respectively Before the High Court it was argued on behalf of the assessee that the furnaces were purchased for the purpose of being installed in the factory It was therefore to be used as capital asset and not as a part of the stock-in-trade At the time of purchase the assessee had no idea of selling the furnaces and there was no intention of making any profit The business which was carried on by the assessee was entirely different, namely, production of machinery and parts and the sale of the furnaces, when they were found to be unserviceable, was not made in the course of the normal business activity of the assessee. The position taken up on behalf of the State was that when the assessee carried on the business of selling machinery of various kinds the sale of arc furnance must be regarded as sale of machinery in the normal course of its business activity The learned Judges of the High Court referred to a large number of decided cases including the decision of this Court in *State of Andhra Pradesh* v *Abdul Bakshi and Brothers*[1] Reliance was finally placed on the observations in *Ambica Mills Ltd* v *State of Gujarat*[2] in which it was observed *inter alia* that the machinery which had been disposed of had been obviously purchased and installed for use for production of textile goods The view taken in that decision was that a person could not be said to be carrying on business of selling assets of that business when sale of such assets had been made only because they had become useless and unserviceable by usual wear and tear or because of the necessity for substituting modern machinery In the present case the learned Madras Judges were of the opinion that it was impossible to hold that the sale of the arc furnaces was either ingrained in the business activity of the assessee or would constitute its normal business activity According to them the mere fact that the sale price exceeded the cost price of the arc furnaces was not sufficient to establish that their sale was a business activity or that it was actuated by the profit motive It was consequently held that the turnover of the assessee was not liable to sales tax

1. (1964) 15 S.T.C. 644 2 (1964) 15 S T.C. 367.

Mr A. K Sen for the appellant contends that the assessee being a dealer in heavy machinery and accessories thereof the sale of arc furnaces could not be said to be wholly different and unconnected with its usual business activity He has emphasised the fact that the assessee had admittedly made a profit of Rs 2,07,000 from the aforesaid transaction and in addition collected sales tax from the Calcutta dealer. He has called attention to the finding of the Appellate Assistant Commissioner of Commercial Taxes that the sale in the present case was not one of used assets and that whatever the intention at the time of the purchase might be, once the machinery was found not usable, the assessee " has got necessarily to get into a business venture of selling it and in point of fact sold it at good profit " It is further urged that the arc furnaces became a part of stock or machinery for sale because the assessee was dealing in manufacture and sale of heavy machinery and it must be deemed to have put the furnaces into its stock in due course of business activity Mr Sen has next pointed out that the respondent fell squarely within the definition of the word " dealer " as defined by section 2 (*d*) of the Central Act. In support of his submission Mr Sen sought to rely on a decision of this Court in *The State of Andhra Pradesh v. Abdul Bakshi and Brothers* [1] In that case the respondents had purchased undressed hides and skins and tanning bark together with other material required in their tannery as they carried on the business of tanning hides and skins and of selling tanned skins in the town of Hyderabad For the assessment year 1954-55 the Sales Tax Officer sought to include in the total turnover a certain amount representing the price paid for buying tanning bark required in their tannery The respondents submitted that the tanning bark had been bought for consumption in tannery and not for sale and they were accordingly not dealers in tanning bark. Therefore the price paid for buying tanning bark was not liable to duty under the Hyderabad General Sales Tax Act The departmental authorities as also the Sales Tax Appellate Tribunal rejected this contention but it was accepted by the High Court of Andhra Pradesh The High Court rejected the claim of the taxing authorities to tax the tanning bark on the ground that the purchaser was liable to pay tax only when he was carrying on business of buying and selling the commodity and not when he bought it for consumption in the process for manufacturing an article to be sold by him. This view was reversed and it was observed as follows :

> " A person to be a dealer must be engaged in the business of selling or buying or supplying goods The expression ' business ' though extensively used is a word of indefinite import In taxing statute it is used in the sense of an occupation or profession which occupies the time, attention and labour of a person, normally with the object of making profit To regard an activity as business there must be a course of dealings either actually continued or contemplated to be continued with a profit motive, and not for sport or pleasure "

Mr Sen has laid stress on what has been said further at pages 647 and 648 :

> " The Legislature has not made sale of the very article bought by a person a condition for treating him as a dealer : the definition merely requires that the buying of the commodity mentioned in rule 5 (2) must be in the course of business, *i e*, must be for sale or use with a view to make profit out of the integrated activity of buying and disposal The commodity may itself be converted into another saleable commodity, or it may be used as an ingredient or in aid of a manufacturing process leading to the production of such saleable commodity "

The facts in the decision of this Court under discussion were different and distinguishable from the present case. The tanning bark was actually consumed in the process of manufacturing another commodity and it was either used as an ingredient or for aiding the process of manufacture which cannot be said about the arc furnaces which were indisputably bought for being installed in the foundry as a part of the manufacturing plant The words " in aid of a manufacturing process " have to be read in the context in which they appear in passage extracted above and cannot be taken to mean that even a part of manufacturing plant will become a saleable com-

1. (1964) 15 S T C, 644.

modity if it is found to be unusable or no longer required Such a view is untenable and cannot be regarded as sustainable in the light of the decision of this Court. In *State of Gujarat* v *Raipur Manufacturing Co , Ltd*[1], the Tribunal had held that where a cotton textile mill had managed to collect unserviceable articles in the course of manufacture of cloth which were sold, sales of these articles must be regarded as part of the business of the textile mill if the transactions of sale were large and frequent After referring to the definition of the expression " dealer " in section 2 (6) of the Bombay Sales Tax Act, 1953 and the other relevant provisions of that Act as also the law laid down in the *State of Andhra Pradesh* v *Abdul Bakshi and Brothers*[2], it was observed that by the use of the expression " profit motive " it was not intended that profit must, in fact, be earned nor did the expression cover a mere desire to make some monetary gain out of the transaction or even a series of transactions It predicates a motive which pervades the whole series of transactions effected by the person in the course of his activity Where a person came to own, in the course of his business of manufacturing or selling a commodity, some other commodity which is not a by-product or a subsidiary product of that business and he sold that commodity, cogent evidence that he had the intention to carry on the business of selling that commodity would be required. It was further observed that where a person in the course of carrying on the business was required to dispose of what might be called his fixed assets or his discarded goods acquired in the course of business, an inference that he desired to carry on the business of selling his fixed assets or discarded goods would not ordinarily arise. In the *State of Gujarat* v. *Vivekanand Mills*[3], the assessee was carrying on the business of manufacturing cotton fabrics It had agreed to purchase under user's import licence 300 bales of Califioinian cotton in January, 1953. Believing that the shipment would arrive after six months the assessee made arrangement to purchase 300 bales of similar cotton to meet its immediate requirements The consignment of Californian cotton arrived unexpectedly in April, 1953 A large sum of money belonging to the assessee was locked up and with the sanction of the authorities the assessee sold 411 bales of this cotton to other mills It was held that in selling the cotton with a view to avoid locking up of funds, it could not be inferred that the assessee had sold the goods with the intention to carry on the business of selling cotton and the sales were not liable to tax It was clear from the Supplemental Statement of the Case which had been submitted that though the assessee had been selling cotton from the year 1946 onwards except for three intervening years the sales were in respect of goods purchased for the business of manufacturing cotton cloth and the sales had been effected either because the cotton was surplus or the assessee had to accommodate its sister concern or with the view that the finances were not locked up by detaining cotton which the assessee did not need for its business

The facts and circumstances which have been established in the present case are stronger than those in the previous decisions of this Court . The furnances were admittedly imported for the purpose of being installed as a part of the plant in the foundry of the assessee There is no material whatsoever to show that there was any intention at the time when the furnances were purchased of selling them at a profit According to Mr Sen himself the assessee decided to sell the furnaces because it was discovered that they were too big to be installed in the manufacturing plant. The case of the assessee throughout was and no evidence or material to the contrary existed that the furnance had been shown in the books of the assessee under the classification " workshop equipment " The same entries existed in the balance-sheet Although the assessee was dealing in the sale of heavy machinery and machinery parts it was nowhere proved that furnances were ever manufactured or sold by it or were part of its business or ingrained therein The arc furnaces were either fixed assets or discarded good which had been found to be unserviceable or unsuitable The assessee could therefore hardly be said to be a dealer within the definition given in section 2 (*b*) of the Central Act which is

1. (1967) 19 S T C 1 · A I R 1967 S C 1066
2. (1964) 15 S T C 644
3. (1967) 19 S.T.C. 103.

"dealer means any person who carries on the business of selling goods, and includes a Government which carries on such business"

This definition has to be read in the light of the principles which have been laid down by this Court in the cases referred to above

It must therefore be held that the High Court rightly came to the conclusion that the sale proceeds of the furnaces, could not be included in the turnover of the assessee for the purpose of determining the liability of the assessee to sales tax. The appeal fails and is dismissed with costs

K G S ——— *Appeal dismissed.*

THE SUPREME COURT OF INDIA.

(Original Jurisdiction)

PRESENT.—K. N. WANCHOO, *Chief Justice*, R. S. BACHAWAT, J.M. SHELAT G. K. MITTER AND C. A. VAIDIALINGAM, JJ.

Udai Ram Sharma and others, etc. .. *Petitioners**

v

The Union of India and others, etc. .. *Respondents.*

Jayantilal M. Gandhi .. *Intervener.*

Land Acquisition (Amendment and Validation) Act (XIII of 1967)—*Constitutional validity—If encroaches on the domain of the judiciary—If violative of Article* 31 (2) *or Article* 14 *of the Constitution of India.*

By *majority* (*Wanchoo, C J*, *Bachawat* and *Mitter, JJ*). The power to legislate for validation of actions taken under statute which were not sufficiently comprehensive for the purpose is only ancillary to legislate on any subject within the competence of the Legislature and such Validating Acts cannot be struck down merely because Courts of law have declared actions taken earlier to be invalid for want of jurisdiction Nor is there any reason to hold that in order to validate action without legislative support the Validating Act must enact provisions to cure the defect for the future and also provide that all actions taken or notifications issued must be deemed to have been taken or issued under the new provisions so as to give them full retrospective effect No doubt Legislatures often resort to such practice but it is not absolutely necessary that they should do so as to give full scope and effect to the validating Acts.

The contentions raised about the invalidity of the Land Acquisition (Amendment and Validation) Act, 1967 on the ground that section 3 thereof was not made expressly retrospective or that it encroached upon the domain of the Judiciary by seeking to nullify judicial decisions cannot therefore be sustained The American d ctrine of well-defined separation of legislative and judicial powers has no application to India and it cannot be said that an Indian statute which seeks to validate invalid actions is bad if the invalidity has already been pronounced upon by a Court of law Parliament is competent to validate such actions and transactions, its power in that behalf being only circumscribed by the appropriate entries in the Lists of the Seventh Schedule and the Fundamental Rights set forth in Part III of the Constitution

The absence of a provision in the Amending Act of 1967 to give retrospective operation to section 3 thereof does not affect the validity of section 4 of the Amending Act as contended for Section 4 of the Amending Act being within the legislative competence of Parliament, the provisions thereof are binding on all Courts of law notwithstanding judgments, orders or decrees to the contrary rendered or made in the past

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* W P Nos 114, 216, 223 and 252 of 1966 and 85 of 1967

7th February, 1968.

Nor has the contention any force that the Amendment Act XIII of 1967 violates Article 31 (2) of the Constitution of India By the validation of actions taken under section 6 of the Principal Act (Land Acquisition Act of 1894) more than once in respect of a single notification under section 4 of the Principal Act, the original scheme of acquisition is not altered. The public purpose behind the notification under section 4 of the Principal Act remains the same It is not as if a different public purpose and acquisition of land for such purpose were being interpolated by means of the Amendment Act The principle of compensation remains the same under the Validation Act as it did under the Principal Act of 1894 Only the shortcomings in the Principal Act as to want of provision to enable more than one declaration under section 6 is being removed The Validation Act XIII of 1967 does not therefore fall within the mischief pointed by the Supreme Court in various decisions starting from *The State of West Bengal* v. *Mrs Bela Banerjee*, (1954) S.C R 558: (1954) S C J. 95. (1954) I M L J. 162.

The Amending Act does not really derogate from the principle that the valuation on the date of issue of notification affords the criterion for determining compensation of all lands to be acquired It cannot be said of the Validating Act that it was fixing an arbitrary date for the valuation of the property which bore no relation to the acquisition proceedings As such there has been no violation of Article 31 (2) of the Constitution merely because the actions already taken have been sought to be validated. Nor is there any colourable or fraudulent exercise of legislative power.

With regard to the question as to discrimination violative of Article 14 of the Constitution it goes without saying that whenever an Amending Act is passed, there is bound to be some difference in treatment between transactions which have already taken place and those which are to take place in the future That by itself will not attract the operation of Article 14 Again even with respect to transactions which may be completed in the future, a reasonable classification will not be struck down.

The Legislature by enacting the Validation Act XIII of 1967 has sought to improve upon the existing provision of the Land Acquisition Act and there is no discriminatory treatment which should be struck down as violative of Article 14 of the Constitution.

It is not possible to say that because the Legislature thought of improving upon the Act of 1894 by prescribing certain limits of time for acquisition as from 20th January, 1967 the difference in treatment in cases covered by notifications before the said date and after the said date denies equal protection of laws because the transactions are not similarly circumstanced. Article 14 does not strike at a differentiation caused by the enactment of a law between transactions governed thereby and those which are not so governed.

The Legislature might have made more liberal provisions for improvement but it is not for the Supreme Court to strike down a piece of legislation because the improvement falls short of the expectation of the litigants.

With regard to the provisions for payment of interest made in the validating Act no grievance can be made, in that interest is not allowed in respect of transactions which have been already completed and compensation taken Even here the classification is not unreasonable and cannot be said to be unrelated to the object of the Act.

Per Shelat and *Vaidialingam, JJ* (Dissenting opinion): The impugned Act does not frankly deal with compensation But it is well settled that in determining the constitutionality of a provision impugned on the ground of its being an invasion on a fundamental right the Court must weigh not its form which may apparently look innocuous but its real effect and impact on such fundamental right Therefore from the mere fact that the impugned Act does not amend section 4 or 23 of the principal Act it is not possible to say that it is not an Act

dealing with or affecting compensation. It is thus impossible to say that the impugned Act is not the law of acquisition contemplated by Article 31 (2) of the Constitution.

The impugned Act being a legislation after the Constitution 4th Amendment of 1955 the question as to adequacy of compensation is no longer amenable to judicial scrutiny but the amendment of Article 31 (2) in 1955 has not affected the constitutional requirement that no property can be compulsorily acquired except under a law providing for compensation or which provides principles fixing such compensation Article 31 (2) as amended means therefore that if the impugned Act either fixes just equivalent as compensation or lays down principles for fixing such just equivalent it cannot be impeached on the ground that such compensation is inadeq ate or that when working out those principles the resultant compensation is inadeq ate. B t this does not mean that the amendment permitted the Legislature to fix inadequate compensation or to lay down principles fixing compensation which is not just equivalent.

Section 4 of the impugned Act suffers from a two-fold vice. (*i*) it purports to validate acquisitions, orders and notifications without resuscitating the notification under section 4 of the princip l Act by any legislative provision on the basis of which alone the validated acquisitions, orders and decl rations can properly be sustained and (*ii*) its provisions are in derogation of Article 31 (2) as interpreted by the Supreme Court by fixing compensations on the basis of value on the date of notification under section 4 of the principal Act which had become exhausted and for keeping them alive no legislative provision is to be found in the impugned Act. It is therefore not possible to agree with the view that the purpose of section 4 of the impugned Act is to fill in the lacuna pointed out in *Sharma's case*, (1966) 3 S C R 557 (1966) 2 S C J 231 nor with the view that it raises a question of adequacy of compensation. The section under the guise of validating the acquisitions, orders and notifications camouflages the real object of enabling acquisitions by payment of compensation on the basis of values frozen by notification under section 4 which by part acquisitions thereunder had lost their efficacy and therefore required the rest of the land to be notified afresh and paying compensation on the date of such fresh notifications

R^ference under Article 32 of the Constitution of India for enforcement of the Fund3mental Rights.

C B. Agarwala, Senior Advocate, (*K P Gupta*, Advocate, with him), for Petitioners (In W Ps Nos 114, 216 and 252 of 1966, and 85 of 1967).

R V S. Mani and *K P Gupta*, Advocates, for Petitioner (In W P No 223 of 1966).

Niren De, Solicitor-General of India and *B R. L Iyengar*, Senior Advocate, (*R. N Sachthey*, Advocate, with them), for Respondents (In W Ps. Nos. 114 and 216 of 1966).

Niren De, Solicitor-General of India (*R. H. Dhebar* and *R. N. Sachthey*, Advocates, with him), for Respondents Nos. 1 to 5 (In W P No 223 of 1966) and Respondents (In W P No. 85 of 1967).

R N Sachthey, Advocate, for Respondent No 9 (In W P No 223 of 1966).

M. K Ramamurthi, *Vineet Kumar* and *Mrs Shyamala Pappu*, Advocates, for Respondents Nos. 12 (*a*) to 12 (*d*) (In W P. No. 223 of 1966)

Dr V. A Seyid Muhammad, Senior Advocate, (*R H Dhebar* and *R. N Sachthey*, Advocates, with him), for Respondents Nos 1 to 5 (In W P No 252 of 1966).

P. C Bhartari, Advocate for *M/s. J B Dadachanji & Co.*, for Intervener (In W P. No. 114 of 1966).

The following Judgments were delivered :

Mitter, J. (on behalf of *Wanchoo, C J*, *Bachawat, J*, and himself): This is a group of five Writ Petitions under Article 32 of the Constitution challenging in four cases the validity of land acquisition proceedings started by a notification dated 13th November, 1959 under section 4 of the Land Acquisition Act and declarations contained in other notifications dated 18th March, 1966 onwards under section 6 of the said Act and for other incidental reliefs including the issue of appropriate writs for the purpose Various persons have joined as petitioners in three of the applications In Writ Petition No. 114 of 1966 the petitioners number 61. They all own lands in village Mandawali Fazilpur, on Patpur Gunj Road within the Union territory of Delhi, the notification of the declaration under section 6 having been made on 18th March, 1966 In Writ Petition No. 216 of 1966 there are 71 petitioners who also own lands in the same village. Their complaint is based on the same notification under section 4 and a notification dated 12th July, 1966 under section 6 of the Act In Writ Petition No 223 of 1966 the single petitioner is Pandit Lila Ram who owned lands in villages Masjid Moth, Raipur Khurd and Shahpur Jat respectively within the Union territory of Delhi His complaint is based on a section 4 notification dated 3rd September, 1957, a notification dated 15th April, 1961 under section 6 of the Act and several awards of Land Acquisition Collector, Delhi made in 1961 In Writ Petition No. 252 of 1966, there are eight petitioners who owned lands in village Kotla at Patparganj Road within the Union territory of Delhi Their grievance is against section 4 notification dated 13th November, 1959 and a notification dated 14th June, 1961 under section 6 of the Act In Writ Petition No. 85 of 1967 the sole petitioner is one Rai Bahadur Sohan Lal who owned land in village Kilokri on the Delhi-Mathura Road within the Union territory of Delhi His grievance is against section 4 notification dated 13th November, 1959, a notification dated 27th July, 1961 under section 6 of the Act and an award dated 16th February, 1962.

Although there are some distinctive features in some of the petitions to be mentioned later, the common attack is based on the judgment of this Court delivered on 9th February, 1966 in *State of Madhya Pradesh* v *V P Sharma*[1] That case arose out of proceedings for acquisition of land in eleven villages in Madhya Pradesh for the steel plant at Rourkela. There a notification had been issued under section 4 (1) of the Land Acquisition Act on 16th May, 1949 declaring that lands in eleven named villages were likely to be needed for a public purpose *i e*, the erection of an iron and steel plant Thereafter, notifications were issued under section 6 from time to time and some lands in village Chhawani were acquired in the year 1956. In August, 1960 a fresh notification under section 6 of the Act was issued proposing to acquire Ac 486-17 of land in the said village Some owners of the land in the village who were affected by the notification filed a writ petition challenging the validity of the notification under section 6 The High Court accepted their contention whereupon the State of Madhya Pradesh came up to this Court in appeal. It was held by this Court that sections 4, 5-A and 6 of the Land Acquisition Act were integrally connected and that acquisition always began with a notification under section 4 (1) followed by consideration of all objections thereto under section 5-A and a declaration under section 6. According to this Court, once a declaration under section 6 was made the notification under section 4 (1) was exhausted and the latter section was not a reservoir from which the Gover ment might from time to time draw out land and make declaration with respect to it successively The ultimate conclusion was that there could be no successive notifications under section 6 with respect to land in a locality specified in one notification under section 4 (1) and in the result, the appeal of the State was dismissed The present Writ Petitions were all filed after the said judgment of this Court.

The omnibus notification under section 4 in four of these cases dated 13th November, 1959 covered an area of Ac 34,070-00 marked as blocks Nos A to T and

1. (1966) 3 S C R. 557 : (1966) 2 S C J 231.

X in a map enclosed with the notification excepting therefrom certain classes of lands, namely, (*a*) Government land and evacuee land, (*b*) land already notified either under section 4 or under section 6 of the Act for any Government scheme, (*c*) land already notified either under section 4 or under section 6 for house building co-operative societies mentioned in annexure (iii) to the notification and the land under graveyards, tombs, shrines and those attached to religious institutions and wakf property. The notification stated that land was required by the Government at the public expense for a public purpose, namely, the planned development of Delhi. As already noted, there were several notifications under section 6 made from time to time, the earliest one in this series of petitions being dated 14th June, 1961. It is clear that on the basis of the judgment of this Court the validity of the notifications under section 6 of the Act after the first of the series could not be upheld in a Court of law.

On 20th January, 1967 an Ordinance was promulgated by the President of India styled The Land Acquisition (Amendment and Validation) Ordinance (I of 1967). The scheme of the Ordinance was that the Land Acquisition Act of 1894 was to have effect, subject to the amendment specified in sections 3 and 4 of the Ordinance. Section 3 purported to amend section 5-A of the Land Acquisition Act (hereinafter referred to as the principal Act) by enabling different reports to be made in respect of different parcels of land under section 5-A of the Act. Similarly, section 4 of the Ordinance purported to amend section 6 of the principal Act by enabling different declarations to be made from time to time in respect of different parcels of land covered by the same notification under section 4. Section 5 of the Ordinance purported to validate all acquisitions of land made or purporting to have been made under the principal Act before the commencement of the Ordinance, notwithstanding any judgment, decree or order of any Court to the contrary.

On 12th April, 1967 Parliament passed an Act (XIII of 1967) styled The Land Acquisition (Amendment and Validation) Act, 1967 section 2 of this Act purported to amend section 5-A of the principal Act to allow the making of more than one report in respect of land which had been notified under section 4 (1). Section 3 similarly purported to amend section 6 of the principal Act by empowering different declarations to be made fr m time to time in respect of different parcels of land covered by the same notification under section 4 (1) irrespective of whether one report or different reports had been made under section 5-A sub-section (2). Clause (ii) of section 3 inserted a new proviso to section 6 (1) reading:

> " Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1), published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, shall be made after the expiry of three years from the date of such publication."

As a good deal of argument turns on the interpretation of section 4 of the Amending Act, it is necessary to set the same out in extenso.

> " 4. (1) Notwithstanding any judgment, decree or order of any Court to the contrary,—
>
> (*a*) no acquisition of land made or purporting to have been made under the principal Act before the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, and no action taken or thing done (including any order made, agreement entered into, or notification published) in connection with such acquisition shall be deemed to be invalid or ever to have become invalid merely on the ground—
>
> (*i*) that one or more Collectors have performed the functions of Collector under the principal Act in respect of the land covered by the same notification under sub-section (1) of section 4 of the principal Act,
>
> (*ii*) that one or more reports have been made under sub-section (2) of section 5-A of the principal Act, whether in respect of the entire land, or different

parcels thereof, covered by the same notification under sub-section (1) of section 4 of the principal Act,

(*iii*) that one or more declarations have been made under section 6 of the principal Act in respect of different parcels of land covered by the same notification under sub-section (1) of section 4 of the principal Act

(*b*) any acquisition in pursuance of any notification published under sub-section (1) of section 4 of the principal Act before the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, may be made after such commencement and no such acquisition and no action taken or thing done (including any order made, agreement entered into or notification published), whether before or after such commencement, in connection with such acquisition shall be deemed to be invalid merely on the grounds referred to in clause (*a*) or any of them.

(2) Notwithstanding anything contained in clause (*b*) of sub-section (1), no declaration under section 6 of the principal Act in respect of any land which has been notified before the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, under sub-section (1) of section 4 of the principal Act, shall be made after the expiry of two years from the commencement of the said Ordinance

(3) Where acquisition of any particular land covered by a notification under sub-section (1) of section 4 of the principal Act, published before the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, is or has been made in pursuance of any declaration under section 6 of the principal Act, whether made before or after such commencement, and such declaration is or has been made after the expiry of three years from the date of publication of such notification, there shall be paid simple interest, calculated at the rate of six per cent per annum on the market value of such land, as determined under section 23, of the principal Act, from the date of expiry of the said period of three years to the date of tender of payment of compensation awarded by the Collector for the acquisition of such land:

Provided that no such interest shall be payable for any period during which the proceedings for the acquisition of any land were held up on account of stay or injunction by order of a Court

Provided further that nothing in this sub-section shall apply to the acquisition of any land where the amount of compensation has been paid to the persons interested before the commencement of this Act."

Section 5 of the Amending Act repealed the Land Acquisition (Amendment and Validation) Ordinance, 1967 and further provided that notwithstanding such repeal, anything done or any action taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Act as if this Act had come into force on the 20th January, 1967.

The petitions before us were amended by leave of the Court so that the Validation Act of 1967 could be challenged Mr C B Agarwala who appeared for the petitioners in Writ Petitions Nos. 114, 216, 252 of 1966 and 85 of 1967 raised the following points in support of the petitions ; (1) The Validation Act does not revive the notification under section 4 which had become exhausted after the first declaration under section 6 and no acquisition could be made without a fresh notification under section 4 (2) The Validation Act violated Article 31 (2) of the Constitution inasmuch as it purported to authorise acquisitions without fresh notifications under section 4 thereby allowing compensation to be paid on the basis of the dead notification under section 4 It was argued that once a notification under section 4 was exhausted Government had to make a fresh one under the said section, as a result thereof compensation had to be assessed on a different basis altogether (3) The Validation Act violated Article 14 of the Constitution in various ways —

(a) It made discrimination inasmuch as a notification under section 4 made before the commencement of the Ordinance had to be followed by a declaration under section 6 within two years of the said date, whereas if a notification under section 4 was made after 20th January, 1967 i e, the date of the Ordinance, the declaration under section 6 could be made within a period of three years from the date of the notification under section 4 The discrimination lay in the fact that whereas a declaration under section 6 had to be made in respect of a notification under section 4 bearing date subsequent to 20th January, 1967 within three years, a much longer period of time might elapse between a date of declaration under section 6 and a notification under section 4 issued prior to the date of the Ordinance

(b) If a notification under section 4 was made after the date of the Ordinance, compensation had to be paid on the basis of such notification but if a notification had been made under section 4 of the Act before the date of the Ordinance, compensation would be awarded on the basis of the exhausted notification under section 4 however much time might have elapsed since the date of the dead notification

(c) If compensation had not been paid before the Ordinance, interest at 6 per cent had to be paid to the owner of the land on the amount of compensation fixed, but if the owner had received compensation before the date of the Ordinance, he had no claim to interest although the acquisition in both cases flowed from the same notification under section 4.

(d) It was open to Government to make a fresh notification under section 4 after the lapse of three years from the date of the Ordinance and such notification might be issued after every period of three years in any case where acquisition was not completed In such cases, owners of land would be substantially benefited by the new notification under section 4 But if a notification had been made before the date of the Ordinance, the owner of the land would receive compensation based on the old notification although a period much longer than three years might elapse between the date of the notification under section 4 and a declaration under section 6, his only solatium being interest at 6 per cent. per annum on the amount of the compensation This would result in discrimination inasmuch as a person affected by a section 4 notification prior to the date of the Ordinance would be treated very differently from another person whose land was acquired in terms of a notification made after the commencement of the Ordinance.

On the first point, it was argued by Mr. Agarwala that sections 2 and 3 of the Amending Act had no retrospective operation, that there was no law which purported to validate retrospectively any but the first report made under section 5 A of the principal Act or any but the first declaration issued under section 6 of the Act and consequently there was no legal basis for the validation of such past acts by the operation of section 4 of the Amending Act It was therefore argued that the defect in the principal Act as pointed out by this Court in *V P. Sharma's case*[1], was not removed by section 4 of the Amending Act It was urged that Acts seeking to validate past transactions can only be effective if the amendment introduced had retrospective operation so as to cure the lacuna in the enactment from date anterior to that of the impugned transactions. If the Amending Act had no retrospective operation, it could not protect past transactions which would still have to be declared invalid inasmuch as the notification under section 4 made on 13th November, 1959 having exhausted itself after the first declaration under section 6 was not resuscitated by any provision of the Amending Act.

On the second point, the broad contention urged was that the amendment was hit by Article 31 (2) of the Constitution inasmuch as its whole purpose was to avoid payment of enhanced compensation which would be necessitated if a fresh notification had to be issued under section 4. The notification dated 13th November, 1959 having spent itself, a fresh one in the normal course would have to be issued and compensation be paid not on the basis of valuation on 13th November, 1959 but on

1. (1966) 2 S.C.J. 231 · (1966) 3 S C R 557

that prevailing at least 8 or 9 years afterwards which would be substantially higher. It was argued that acquisition on the basis of any declaration under section 6 of the Act after the first one would in effect be providing for compensation on the basis of a notification under section 4 which had no relation to the acquisition In other words, the date of the earlier notification under section 4 must be treated to be an arbitrary date divorced from and completely alien to the acquisition sought to be made by a subsequent declaration under section 6. In such circumstances, the ratio of a number of decisions of this Court starting from that of *The State of West Bengal* v *Mrs Bela Banerjee*[1], to a recent judgment in *Union of India* v. *Kamalabai Harjivandas Parekh and others*[2], would apply. It is not necessary to examine all these decisions in detail The notable decisions to which reference was made at some length are *P V Badahar* v *Deputy Collector*[3], *Jeejeebhoy* v *Assistant Collector*[4], and *State of Madras* v *D Namasivaya Mudaliar*[5] It was argued that though the Land Acquisition Act was saved by Article 31 (5) (*a*) of the Constitution, any amendment thereto after the coming into force of the Constitution had to pass the test of Article 13 and Article 31 (2) would apply with full force to any amendment of the Land Acquisition Act if as a result thereof a person expropriated was being deprived of compensation *i e.*, the just equivalent of the property acquired The point sought to be made was that the notification of 13th November, 1959 having exhausted itself, the value of the property at or about that date would be illusory compensation in violation of Article 31 (2) in respect of a declaration under section 6 made after the first one of the series. Reference was made to proceedings for compulsory acquisition of land in England under the Lands Clauses Acts under which " once the undertakers or authority are authorised to purchase, the next step in the normal course is to serve a notice to treat". *See* Halsbury's Laws of England, third edition, volume 10, page 60, Article 97. It is pointed out in Article 102 of the said book that

> " The effect of serving a notice to treat is to establish a relation analogous in some respects to that of a purchaser and vendor, a relation which binds the undertakers to take the land and binds the land, owner to give up the land subject to his being paid compensation, but until the price is ascertained the land remains the property of the landowner. Both parties have the right to have the price ascertained and the purchase completed in manner provided by the Lands Clauses Acts ".

It was said that the English procedure ensured the payment of just equivalent of the property to the person who was deprived of it and that issue of a declaration under section 6 made years after the notification under section 4 the date of which alone was to be considered for fixing the value of the property, ignored the rights of the person to the lawful compensation aimed at by Article 31 (2) of the Constitution. Reference was made to the judgment the Judicial Committee of the Privy Council in *Ezra* v *Secretary of State for India*[6], where on a reference to the sections of the Land Acquisition Act as they then stood, it was observed :

> " that the expert official charged with the duty of fixing a value should be possessed of all the information in the hands of the department, and should at the same time avail himself of all that is offered at the enquiry, his ultimate duty being not to conclude the owner by his so-called award, but to fix the sum, which in his best judgment is the value and should be offered ".

On the question of violation of Article 14 of the Constitution, besides the general argument already referred to, it was urged that in Writ Petition No 85 of 1967 there was a further point as to discrimination The facts laid in this petition

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1 (1954) S C J 95 (1954) 1 M L J 162 (1954) S C R 558

2 (1968) 2 S C J 114 · A I R 1968 S C 377

3 (1964) 2 S C J 703 (1964) 2 M L J. (S C) 173 (1964) 2 An W R (S C) 173 (1965) 1 S C R 614

4 (1965) 1 S C R 636

5 (1965) 2 An W R (S C) 82 (1965) 2 M.L J (S C) 82 (1965) 2 S C J 563 (1964) 6 S C R 936.

6 (1905) I L R 32 Cal 605 at 629.

are as follows. The petitioner was the owner of land measuring Ac 10—62 in village Kilokri. He wanted to develop the land by establishing a residential colony and selling the same out in plots. For this purpose, he had spent a good deal of money and taken enormous trouble and divided the area after development into 78 residential plots In 1956 he had submitted a lay out plan of the land in question for necessary sanction to the Delhi Development Provisional Authority On 18th June, 1956 he was informed by the Delhi Development Provisional Authority that the final lay out plan has been approved by the said authority In September, 1957 the said authority demanded from the petitioner a security for Rs 12,850-25 as a guarantee for carrying out the development of the colony in accordance with the approved standards and this sum was duly deposited by the petitioner On 15th September, 1958 the petitioner submitted service plans in respect of his colony and these were duly checked and found to be in order · the case was ordered to be placed before the Standing Committee of the Municipal Corporation for approval By 24th December, 1958 the Standing Committee referred the case back to the Town Planner for a scrutiny of the ownership documents. The question relating to the proof of ownership was settled on 19th March, 1961. In the meantime, the notification dated 13th November, 1959 had been issued under section 4 (1) of the Act. The petitioner duly filed his objections under section 5 A of the Act By a notification dated 1st July, 1960 published by the Delhi Administration, the Chief Commissioner, Delhi withdrew the land of 16 colonies from the acquisition out of the area covered by the notification of 13th November, 1959 on the ground that their lay out plan had been sanctioned by the Delhi Municipal Corporation and as per general decision of the Standing Committee, Delhi Municipal Corporation, the petitioner was asked by the Town Planner by letter dated 16th April, 1960 to submit a denotification certificate to the effect that the land comprising the proposed lay out of his colony was excluded from the purview of the notification issued under section 4 of the Act On 14th June, 1961 the Deputy Housing Commissioner, Delhi Administration, issued the first notification under section 6 of the Act in respect of 97 bighas and 4 biswas of land in village Kilokri as required by the Government for a public purpose at the public expense, namely, the planned development of Delhi The petitioner's land was not covered by this notification The Deputy Housing Commissioner, Delhi Administration purported to issue another notification, dated 26/27th July, 1961 under section 6 of the Act declaring that land specified therein in village Kilokri was required to be taken by the Government at public expense for a public purpose This notification covered the petitioner's land in question in village Kilokri. On 9th January, 1962 the petitioner was informed by a letter issued by the office of the Town Planner, Municipal Corporation, Delhi, that the Standing Committee of the Municipal Corporation by its resolution No 1190 dated 18th December, 1961 had rejected the lay out plan of the petitioner's colony. According to the petitioner, this resolution went to show that his land was sought to be acquired because it had not been de-notified along with the land of the other colonies on the ground that the Standing Committee had rejected the lay out plan of his colonies Thereafter the Land Acqusition Collector, Delhi, made an award No 1276 dated 16th February, 1962 with respect to the petitioner's said land In March, 1965 the petitioner learnt about the notification issued by the Delhi Administration on 1st July, 1960 under section 48 (1) of the Act withdrawing the land of the 16 colonies mentioned therein from the acquisition out of the area covered by the notification dated 13th November, 1959 on the ground that their lay out plan had been sanctioned by the Delhi Municipal Corporation By letter dated 10th March, 1965 the petitioner asked the Deputy Housing Commissioner, Delhi Administration, for restoration of his land on the same basis because his lay out plan had been sanctioned before the section 4 notification. This request was however turned down by letter dated 14th May, 1965 on the ground that the petitioner's land had already been acquired and could not be released According to the petitioner, there was no basis for treating his land in a manner different from that of the 16 colonies This differential treatment has resulted in violation of Article 14 of the Constitution so far as the petitioner's colony is concerned.

Mr Agarwala also tried to make a subsidiary point in this connection and urged that acquisition for petitioner's land was a colourable exercise of the power under the Act inasmuch as the petitioner was out to do the same thing as was sought to be achieved by proceedings under Land Acquisition Act, the only difference being that, whereas the sales effected by him were at reasonable rates those fetched at auction of lands acquired under the Act were for much higher figures and the State was really making revenue out of such acquisitions.

Mr R V S Mani who appeared for the petitioner in Writ Petition No 223 of 1966 adopted the arguments of Mr Agarwala in general but sought to make a special point of his own In substance the additional ground urged by him was that by the Validating Act the Legislature had sought to encroach into the domain of the Judiciary Mr Mani contended that although there was no clear separation of legislative and judicial powers in our Constitution, nevertheless the Constitution did not confer unlimited powers on the Legislature and it was for the Judiciary to declare the limits of the legislative powers enshrined in the Constitution To quote Mr. Mani's words

> " The Legislature exercises judicial power if its legislative action retroacts on past controversies and overrides or reverses the decisions of the Judiciary "

Such an act, argued Mr Mani, had to be struck down in Courts of law.

Mr Mani's main argument was that inasmuch as sections 2 and 3 of the Amending Act had not been given retrospective effect, the validation sought to be effected by section 4 with respect to the past transactions was of no avail as the impugned actions *i e*, the subsequent declarations under section 6 of the Act, had no legal basis.

In our opinion no useful purpose will be served by referring to the clear demarcation between the judicial powers and legislative powers in America and attempt to engraft the said principle in working of our Constitution This development of the law, as pointed out in *A K Gopalan* v. *State*[1], was due to historical reasons In that case it was pointed out by Das, J, (see at page 286) that

> " the Supreme Court of the United States, under the leadership of Chief Justice Marshall, assumed the power to declare any law unconstitutional on the ground of its not being in ' due process of law, ' . It is thus that the Supreme Court established its own supremacy over the executive and the Congress. In India the position of the Judiciary is somewhere in between the Courts in England and the United States While in the main leaving our Parliament and the State Legislatures supreme in their respective legislative fields, our Constituation has, by some of the articles, put upon the Legislature certain specified limitations.... Our Constitutio , unlike the English Constitution, recognises the Court's supremacy over the legislative authority, but such supremacy is a very limited one, for it is confined to the field where the legislative power is circumscribed by limitations put upon it by the Constitution itself. Within this restricted field the Court may, on a scrutiny of the law made by the Legislature, declare it void if it is found to have transgressed the constitutional limitations "

It will not serve any useful purpose to note the decisions of this Court where reference has been made to the distinction between the Indian Constitutional law and the American Constitutional law on this subject. Mr. Mani sought to rely on a statement of the law made by Cooley in his Constitutional Limitations, 7th edition, page 137, as quoted in Willioughby's Constitution of the United States, second edition, Volume 3 at page 1651 that :

> " If the Legislature would prescribe a different rule for the future from that which the Courts enforce, it must be done by statute, and cannot be done by a mandate to the Courts which leaves the law unchanged, but seeks to compel the Courts to construe and apply it not according to the judicial, but according to the legislative judgment...... If the Legislature cannot thus indirectly control the

1. (1950) S.C.R. 88 at 198 : (1950) S.C.J. 174 : (1950) 2 M.L.J. 42.

action of the Courts, by requiring of them a construction of the law according to its own views, it is very plain it cannot do so directly, by setting aside their judgments, compelling them to grant new trials, ordering the discharge of offenders, or directing what particular steps shall be taken in the progress of a judicial inquiry."

According to Willoughby,

" Retroactive legislation which does not impair vested rights, or violate express constitutional prohibitions, is valid, and, therefore, particular legal remedies, and to a certain extent, rules of evidence may be changed and, as changed, made applicable to past transactions,. ... But substantial rights may not thus be interfered with "

Willoughby seeks to fortify his statement quoting from Cooley again :

" The Legislature does, or may, prescribe the rules under which the judicial power is exercised by the Courts, and in doing so it may dispense with any of those formalities which are not essential to the jurisdiction of the Court ; and whatever it may dispense with by statute anterior to the proceedings, we believe it may also dispense with by statute after the proceedings have been taken, if the Court has failed to observe any of those formalities But it would not be competent for the Legislature to authorise a Court to proceed and adjudicate upon the rights of parties, without giving them an opportunity to be heard before it ; and, for the same reason it would be incompetent for it, by retrospective legislation to make valid any proceedings which had been had in the Courts, but which were void for want of jurisdiction over the parties "

Relying on the above Mr Mani proceeded to argue that the wording of section 4 of the Amending Act was not a question of mere form and that it was a decree purporting to operate as such According to him unless section 3 was retrospective, section 4 would be meaningless and should be struck down Mr Mani relied particularly on the decision of the Federal Court in *Basanta Chandra Ghose* v *King Emperor*[1], where it was held by this Court that Ordinance No III of 1944 did not take away the power of the Court to investigate and interfere with orders of detention or deprive the Court of its power to pass orders under section 491 of the Criminal Procedure Code and the Court was still at liberty to investigate whether an order purporting to have been made under rule 26 of the Defence of India Rules and deemed to be made under the Ordinance or a new order purporting to be made under the Ordinance was in fact validly made, in exactly the same way as immediately before the promulgation of the Ordinance , and if on a consideration the Court came to the conclusion that it was not validly made on any ground other than the ground that rule 26 of the Defence of India Rules was *ultra vires*, section 10 of the Ordinance would no more prevent it from so finding than section 16 of the Defence of India Act did. We shall deal with the argument based on this case later on

The learned Solicitor-General first dealt with the question as to whether Parliament was competent to pass the Validating Act and whether section 4 of the Amending Act could be given effect to unless the Legislature gave retrospective operation to section 3. According to the Solicitor-General and that is undoubtedly the position in law—the legislative competence of Parliament is only circumscribed by the scope of the entries in the appropriate Lists under the Seventh Schedule and the fundamental rights enshrined in Part III of the Constitution The power of Parliament to make laws for the whole or any part of the territory of India is dealt with by the Constitution in Articles 245 to 250, 252 and 253 Acquisition and requisitioning of property is an entry in List III and Parliament is competent to make laws enumerated in that List under Article 246 (2) of the Constitution As early as in the year 1878 it was pointed out by the judicial Committee of the Privy Council in *The Queen* v. *Burah*[1], that the Indian Legislature when acting within

1 (1944) 2 M.L.J. 167 . (1944) F.C.R. 295. 2. (1877) L.R. 5 I.A. 178 at 194.

the limits prescribed (by the Act of the Imperial Parliament which created it) had plenary powers of legislation as much and of the same nature as those of Parliament itself and

> " If what has been done is legislation, within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited (in which category would, of course, be included any Act of the Imperial Parliament at variance with it), it is not for any Court of Justice to inquire further, or to enlarge constructively those conditions and restrictions."

In that case the question before the Judicial Committee was whether Act XXII of 1869 of the Indian Legislature which excluded the jurisdiction of the High Court within certain specified districts was not inconsistent with the Indian High Courts Act or with the Charter of the High Court and so in its general scope within the legislative power of the Governor-General in Council Under section 4 of that Act the territory known as Garo Hills was removed from the jurisdiction of the Courts of Civil and Criminal Judicature and from the control of the officers of revenue, constituted by the regulations of the Bengal Code and the Acts passed by any Legislature established in British India as well as from the law prescribed for such Courts or officers by the Regulations and Acts aforesaid. This section further provided that no Act thereafter passed by the Council of the Governor-General for making laws and regulations shall be deemed to extend to any part of the said territory unless the same was specially named therein Under section 9 of the Act the Lieutenant-Governor was authorised by notification in the Calcutta Gazette to extend *mutatis mutandis* all or any of the provisions contained in the other sections of the Act to the Jaintia Hills, the Naga Hills, and such portion of the Khasi Hills as might for the time being form part of British India The Lieutenant-Governor of Bengal, acting under powers conferred by section 9, extended the provisions of Act XXII of 1869 to the territory of Khasi and Jaintia Hills and excluded therefrom the jurisdiction of the Courts of civil and criminal judicature. The High Court of Calcutta held that the 9th section was not legislation but was a delegation of legislative power This was not accepted by the Judicial Committee and it was observed (at page 195) :

> " ....it is a fallacy to speak of the powers thus conferred upon the Lieutenant-Governor (large as they undoutbedly are) as if, when they were exercised, the efficacy of the acts done under them would be due to any other legislative authority than that of the Governor-General-in-Council. Their whole operation is, directly and immediately, under and by virtue of this Act (XXII of 1869) itself"

Reference was made by Counsel to the case of *Abeyesekra* v. *Jayatilake*[1]. The question there arose as to whether an Order in Council of 1928 amending another of 1923 making provision that the action of a common informer brought to recover penalties under the Order in Council of 1923 be dismissed and further amending the 1923 Order so as to except the office held by the respondent from its operation was valid and constituted an effective defence to the action although it was retrospective in operation. In upholding the validity of 1928 Order, it was observed by the Judicial Committee that Legislators " have certainly the right to prevent, alter or reverse the consequences of their own decrees."

The effect and validity of retrospective legislation has had to be considered by the Federal Court of India and this Court on a number of occasions. In the case of *The United Provinces* v. *Atiqa Begum*[2], a question arose as to whether the Regularisation of Remissions Act, 1938 of the United Provinces Legislature was within its competence. There was an Act in force namely, the Agra Tenancy Act, 1926 the purpose whereof was to consolidate and amend the law relating to agricultural tenancy and certain other matters. Section 73 of that Act provided that

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1. L R (1932) A C 260.
2 (1940) F C R 110. (1941) 1 M.L.J. (Supp.) 65.

"when for any cause the Local Government or any authority empowered by it, remitted or suspended for any period the whole or any part of the revenue payable in respect of any land, a Collector might order that the rents of the tenants should be remitted or suspended to an amount which shall bear the same proportion to the whole of the amount payable in respect of the land as the revenue of which the payment has been so remitted or suspended bears to the whole of the revenue payable in respect of such land"

In 1931 there was a catastrophic fall in agricultural prices followed by threats on the part of tenants to withhold rent on a large scale The Government of the United Provinces devised a scheme for the systematic reduction of rents, varying with the circumstances of the different districts, followed later by consequential adjustments in land revenue The Allahabad High Court had held in *Muhammad Abdul Qaiyum* v *Secretary of State for India*[1], that remissions made in pursuance of the orders of Government had no legal effect In 1938 the Provincial Legislature passed the Regularisation of Remissions Act which precluded any question as to the validity of the orders of remission being raised in the Courts of law The Allahabad High Court took the view that the Act was contrary to the provisions of section 292 of the Government of India Act 1935 because it amounted to an attempt to legislate retrospectively Section 2 of the Act of 1938 provided that.

"notwithstanding anything in the Agra Tenancy Act, 1926 . or in any other law for the time being in force where rent has been remitted on account of any fall in the price of agricultural produce which took place before the commencement of this Act, under the order of the Provincial Government or any authority empowered by it in that behalf, such order, whether passed before or after the commencement of this Act, shall not be called in question in any civil or revenue Court."

Referring to the case of *Queen* v *Burah*[2], Gwyer, C.J, said that there was nothing in section 292 which suggested any intention on the part of Parliament to impose a fetter against retrospective legislation According to the learned Chief Justice, the impugned Act was an Act with respect to "remission of rents" although it might also be an act with respect to something else, that is to say, the validation of doubtful executive orders The learned Chief Justice said:

"It is true that "Validation of executive orders" or any entry even remotely analogous to it is not to be found in any of the three Lists; but I am clear that legislation for that purpose must necessarily be regarded as subsidiary or ancillary to the power of legislating on the particular subjects in respect of which the executive orders may have been issued."

His Lordship further opined that powers of the Court were not affected merely because certain executive orders were not allowed to be questioned in any Court.

In *Piare Dusadh and others* v *The King Emperor*[3], one of the questions raised was whether it was competent for the Legislature by retrospective legislation to make valid any proceedings which had been had in the Courts but which were void for want of jurisdiction over the parties. In this case the facts were as follows The appellants had been convicted by Courts functioning under the Special Criminal Courts Ordinance (Ordinance II of 1942). On 4th June, 1943, the Federal Court held that the Courts constituted under that Ordinance had not been duly invested with jurisdiction, in view of the nature of the provisions contained in sections 5, 10 and 16 of that Ordinance. The next day, the Governor-General made and promulgated another Ordinance (Ordinance XIX of 1943) whereby Ordinance No II of 1942 was repealed and certain provisions were made in respect of sentences which had been passed by the special Courts and in respect of cases which were pending before them on that date By sub-section (2) of section 3 of the new Ordinance, a right of appeal against sentences which has already been passed by the

1. I L R. (1938) All. 114
2. L.R (1877) 5 I.A. 178.
3. (1944) F.C R. 61 : (1944) 1 M.L.J. 305.

special Courts was given and appeals were accordingly preferred to the High Court in some cases In certain other cases applications for a writ in the nature of *habeas corpus* were made. In both sets of cases, it was contended on behalf of the accused that the new Ordinance did not, and in any event could not, give validity to the sentences which had been passed by the special Courts, and it was claimed that the sentences should be treated as void or set aside Section 4 of the new Ordinance provided that.

> " Where the trial of any case pending before a Court constituted under the said Ordinance has not concluded before the date of the commencement of this Ordinance, the proceedings of such Court in the case shall be void and the case shall be deemed to be transferred."

to the ordinary criminal Courts for enquiry or trial in accordance with the Code of Criminal Procedure Section 3 of the Ordinance provided as follows ·

> " (*a*) Any sentence passed by a Special Judge, a Special Magistrate or a Summary Court in exercise of jurisdiction conferred or purporting to have been conferred by or under the said Ordinance shall have effect, and subject to the succeeding provisions of this section shall continue to have effect, as if the trial at which it was passed had been held in accordance with the Code of Criminal Procedure, 1898 by a Sessions Judge, an Assistant Sessions Judge or a Magistrate of the first class respectively, exercising competent jurisdiction under the said Code.
>
> (2) Notwithstanding anything contained in any other law, any such sentence as is referred to in sub-section (1) shall, whether or not the proceedings in which the sentence was passed were submitted for review under section 8, and whether or not the sentence was the subject of an appeal under section 13 or section 19, of the said Ordinance, be subject to such rights of appeal as would have accrued, and to such powers of revision as would have been exercisable under the said Code if the sentence had at a trial so held been passed on the date of the commencement of this Ordinance.
>
> (3) Where any such sentence as aforesaid has been altered in the course of review or on appeal under the said Ordinance, the sentence as so altered shall for the purpose of this section be deemed to have been passed by the Court which passed the original sentence."

Learned Counsel for the accused conceded that the principle of validation by subsequent legislation was quite applicable to judicial as to ministerial proceedings but relying on Cooley's Constitutional Limitations, 8th edition page 205 and also pages 773-776, they contended.—

(*a*) that while such legislation might seek to aid and support judicial proceedings, the Legislature could not under the guise of legislation be permitted to exercise judicial power, and

(*b*) that it was not competent to the Legislature by retrospective legislation to make valid any proceedings which had been held in the Courts, but which were void for want of jurisdiction over the parties.

Spens, C J , observed (at page 100):

> " As a general proposition, it may be true enough to say that the legislative function belongs to the Legislature and the judicial function to the judiciary. Such differentiation of functions and distribution of powers are in a sense part of the Indian law as of the American law But an examination of the American authorities will show that the development of the results of this distribution in America has been influenced not merely by the simple fact of distribution of functions, but by the assumption that the Constitution was intended to reproduce the provision that had already existed in many of the State Constitutions *positively* forbidding the legislature from exercising judicial powers .. .. ..One

result of the application of this rule in the United States has been to hold that "legislative action cannot be made to retroact upon past controversies and to reverse decisions which the Courts in the exercise of their undoubted authority have made." The reason given is that "this would not only be the exercise of judicial power, but it would be its exercise in the most objectionable and offensive form, since the Legislature would in effect sit as a Court of review to which parties might appeal when dissatisfied with the ruling of the Courts In India, however, the Legislature has more than once enacted laws providing that suits which had been dismissed on a particular view of the law must be restored and retried."

The learned Chief Justice referred to the Australian case, *Federal Commissioner of Taxation* v *Munro*[1], where a Board of Appeal constituted under an Act of 1922 had given certain decisions in appeals in income-tax matters The law Courts declared that the Australian Parliament had no power to invest this Board of Appeal with judicial power A later Act established what was described as a Board of Review and assigned to it functions which were held to be different in character from those assigned to the former Board of Appeal This Act however went on to provide that decisions which had already been pronounced by the Board of Appeal "should be deemed to be and at all times to have been decisions of a Board of Review given in pursuance of the provisions of the later Act" This later Act was challenged as vesting judicial power in the Board of Review, but this contention was overruled. Reference may be made to the judgment of Starke, J, quoted by Spens, C J, that

> "Parliament simply takes up certain determinations which exist in fact, though made without authority, and prescribes not that they shall be acts done by a Board of Review, but that they shall be treated as they would be treated if they were such acts The sections, no doubt, apply retrospectively, but they do not constitute an exercise of the judicial power on the part of the Parliament"

The learned Chief Justice observed that this aptly described what had happened in the case before the Federal Court and answered the argument that it was an impossible feat to convert what was not a trial under the Code of Criminal Procedure into a trial under the Code

According to the learned Chief Justice, the real question was, whether the Ordinance was covered by any of the entries in the Seventh Schedule to the Constitution Act "It was not contended" said the Chief Justice "that the mere absence of a specific provision about validating laws was by itself of much significance." As observed by this Court in *Atiqa Begum's case*[2], "the power of validation must be taken to be ancillary or subsidiary to the power to deal with the particular subjects specified in the Lists"

There is nothing in *Basanta Chandra Ghose's case*[3], which detracts from the propositions of law laid down in *Atiqa Begum's case*[2], or *Piare Dusadh's case*[3] In In *Basanta Chandra Ghose case*[3], clause (2) of section 10 provided:

> "If at the commencement of this Ordinance there is pending in any Court any proceeding by which the validity of an order having effect by virtue of section 6 as if it had been made under this Ordinance is called in question, that proceeding is hereby discharged"

Spens, C J., said with regard to this clause that.

> "here there has been no investigation or decision by any Tribunal which the legislating authority can be deemed to have given effect to. It is a direct disposal of cases by the Legislature itself" (see at page 309)

1 38 Com L R 153 110
2. (1941) 1 M L J (Supp) 65. (1940) F C R
3. (1944) 2 M L.J. 167 : (1944) F.C R. 295.

It was pointed out that the nature of the provision considered in *Piare Dusadh's case*[1], was essentially different from clause (2) of section 10 of the impugned Ordinance.

The question has engaged the attention of this Court in a number of cases and we may refer to the case of *West Ramnad Electric Distrubution Co., Ltd.* v. *State of Madras*[2], by way of illustration. In that case, the Madras Legislature had passed an Act (XLIII of 1949) on 24th January, 1950 for the acquisition of undertakings supplying electricity in the Province of Madras. In pursuance of section 4 (1) of the Act the State of Madras passed an order on 17th May, 1951 declaring that the appellant undertaking shall vest in the respondent from 21st September, 1951. The Chief Electrical Inspector took over possession of the appellant and all its records, etc. The State paid to the appellant Rs. 8,34,000 and odd as compensation. According to the appellant, about Rs. 1,00,000 still remained to be paid. Some of the electrical undertakings in Madras which had been taken over filed writ petitions in the High Court which upheld the validity of the impugned Act in so far as it related to the licencees other than municipalities. In *Rajahmundry Electric Supply Corporation Ltd.* v. *The State of Madras*[3], this Court had held that the impugned Act of 1949 was *ultra vires* on the ground that it went beyond the legislative competence of the Madras Legislature inasmuch as there was no entry in any of the three Lists of the Seventh Schedule of the Government of India Act, 1935 relating to compulsory acquisition of any commercial or industrial undertaking. After the decision in this case, the Madras Legislature passed Act XXIX of 1954 which received the assent of the President on 9th October, 1954. This Act incorporated the main provisions of the earlier Act and purported to validate action taken under the earlier Act. The appellant then filed a writ petition alleging that to the extent to which the Act purported to validate acts done under the earlier Act of 1949 it was *ultra vires*. It was further urged that the three bases of compensation as laid down by the Act were inconsistent with the requirement of Article 31 of the Constitution. Section 24 of the Act ran as follows :

> " Orders made, decisions or directions given, notifications issued, proceedings taken and acts or things done, in relation to any undertaking taken over, if they would have been validly made, given, issued, taken or done, had the Madras Electricity Supply Undertakings (Acquisition) Act, 1949 (Madras Act XLIII of 1949), and the rules made thereunder been in force on the date on which the said orders, decisions or directions, notifications, proceedings, acts or things, were made, given, issued, taken or done are hereby declared to have been validly made, given, issued, taken or done, as the case may be, except to the extent to which the said orders, decisions, directions, notifications, proceedings, acts or things are repugnant to the provisions of this Act."

It was held by this Court that this was:

> " a saving and validating provision and it clearly intends to validate actions taken under the relevant provisions of the earlier Act which was invalid from the start. The fact that section 24 does not use the usual phraseology that the notifications issued under the earlier Act shall be deemed to have been issued under the Act, does not alter the position that the second part of the section has and is intended to have the same effect."

The contention that the impugned notification contravened Article 31 (1) because of want of existence of an antecedent law depriving the citizen of his property was turned down with the observation :

> " In our opinion, this argument is not well-founded. If the Act is retrospective in operation and section 24 has been enacted for the purpose of retrospectively validating actions taken under the provisions of the earlier Act, it must follow

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1. (1944) 1 M.L.J. 305 : (1944) F.C.R. 61.
2. (1964) 1 An.W.R. (S.C.) 126 : (1964) 1 M.L.J. (S.C.) 126 : (1964) 1 S.C.J. 484 : (1963) 2 S.C.R. 747.
3. (1954) S.C.J. 310 : (1954) 1 M.L.J. 493 : (1954) S.C.R. 779.

by the very retrospective operation of the relevant provisions that at the time when the impugned notification was issued, these provisions were in existence. That is the plain and obvious effect of the retrospective operation of the statute "

Reference was made to the case of the *United Provinces* v *Mst Atiqa Begum*[1], *Piare Dusadh* v *The King Emperor*[2], and also to the decision in *Union of India* v *Madan Gopal Kabra*[3], and it was finally said (at page 766):

" . . there is no doubt about the competence of the Legislature to enact a law and make it retrospective in operation in regard to topics included within the relevant Schedules of the Constitution."

Reference may also be made to the case of *Rai Ramkrishna* v *The State of Bihar*[4].

All these decisions lay down that the power to legislate for validating actions taken under statute which were not sufficiently comprehensive for the purpose is only ancillary or subsidiary to legislate on any subject within the competence of the Legislature and such Validating Acts cannot be struck down merely because Courts of law have declared actions taken earlier to be invalid for want of jurisdiction. Nor is there any reason to hold that in order to validate action without legislative support the Validating Act must enact provisions to cure the defect for the future and also provide that all actions taken or notifications issued must be deemed to have been taken or issued under the new provisions so as to give them full retrospective effect. No doubt Legislatures often resort to such practice but it is not absolutely necessary that they should do so so as to give full scope and effect to the validating Acts By way of illustration reference may be made to the following Acts (1) The Professions Tax Limitation (Amendment and Validation) Act, 1949 where section 3 (*i*) provided that :

" Notwithstanding anything to the contrary in any other law for the time being in force,—

(*i*) no tax on circumstances and property imposed before the commencement of this Act under clause (*ix*) of sub-section (1) of section 128 of the United Provinces Municipalities Act, 1916, or clause (*b*) of section 108 of the United Provinces District Boards Act, 1922, shall be deemed to be, or ever to have been invalid merely on the ground that the tax imposed exceeded the limit of Rs. 50 per annum prescribed by the said Act, and the validity of the imposition of any such tax shall not be called in question in any Court."

(2) The Hindu Marriages (Validation of Proceedings) Act, 1960 (XIX of 1960) was passed to obviate the shortcomings in the Hindu Marriage Act pointed out by the Punjab High Court in *Janak Dulari* v *Narain Das*[5]. There the High Court held that the Court of an additional Judge cannot be regarded as a principal Court of civil jurisdiction within the meaning of the Hindu Marriage Act and that a District Judge to whom a petition under the Act is presented cannot transfer it to an additional Judge for trial The object of the Validation Act was to validate all proceedings taken and decrees and orders passed by any of the Courts specified in clause (2) exercising or purporting to exercise jurisdiction under the Hindu Marriage Act, section 2 (1) ran as follows :—

" All proceedings taken and decrees and orders passed before the commencement of this Act by any of the Courts referred to in sub-section (2) exercising or purporting to exercise jurisdiction under the Hindu Marriage Act, 1955 shall notwithstanding any judgment, decree or order of any Court, be deemed to be as good and valid in law as if the Court exercising or purporting to exercise such jurisdiction had been a district Court within the meaning of the said Act "

The Courts referred to in sub-section (2) are. the Court of an additional Judge, additional district Judge, etc.

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1. (1941) 1 M.L.J (Supp) 65 (1940) S C J 110 F.C R 110
2. (1944) 1 M L J 305: (1944) F.C R 61
3. (1954) S C R 541 at 554 (1954) S C J 110
4. (1964) 2 S C J 749 · (1964) 1 S C.R. 897
5. A.I R 1959 Punj 50

In our opinion the contentions raised about the invalidity of the Amending Act on the ground that section 3 thereof was not made expressly retrospective or that it encroached upon the domain of the judiciary by seeking to nullify judicial decisions cannot be sustained. The American doctrine of welldefined separation of legislative and judicial powers has no application to India and it cannot be said that an Indian Statute which seeks to validate invalid actions is bad if the invalidity has already been pronounced upon by a Court of law.

In view of the decisions of the Judicial Committee, the Federal Court and this Court referred to above, it must be held that the absence of a provision in the Amending Act to give retrospective operation to section 3 of the Act does not affect the validity of section 4 as contended for It was open to Parliament to adopt either course, *e g* (*a*) to provide expressly for the retrospective operation of section 3, or, (*b*) to lay down that no acquisition purporting to have been made and no action taken before the Land Acquisition (Amendment and Validation) Ordinance, 1967 shall be deemed to be invalid or ever to have become invalid because *inter alia* of the making of more than one report under section 5-A or more than one declaration under section 6 of the Land Acquisition Act, notwithstanding any judgment, decree or order to the contrary Parliament was competent to validate such actions and transactions, its power in that behalf being only circumscribed by the appropriate entries in the Lists of the Seventh Schedule and the fundamental rights set forth in Part III of the Constitution As shown above, there have been instances where the latter course had been adopted by the Indian Parliament in the past

Section 4 of the Amending Act being within the legislative competence of Parliament, the provisions thereof are binding on all Courts of law notwithstanding judgments, orders or decrees to the contrary rendered or made in the past

We find ourselves unable to accept the contention about the violation of Article 31 (2) of the Amending Act It is not suggested that the Validating Act in express words enacts any law which directly affects compensation payable in respect of the property acquired or lays down any principles different from those which were already in the Land Acquisition Act of 1894 After the amendment of the Constitution in 1955 the question of adequacy of compensation is not justiciable and it is enough if the law provides that a person expropriated must be given compensation for his property or lays down the principles for the determination thereof There is not a word about " compensation " in section 4 of the Validating Act Indirectly however, it would affect a person's right to compensation inasmuch as but for the Validating Act the notification under section 4 issued on 13th November, 1959, could not be resorted to for the purpose of making more than one declaration under section 6 of the Act Schemes of the magnitude of the plan for the development of Delhi or for the establishment of an iron and steel plant did not have to be considered in pre-Constitution days The Land Acquisition Act of 1894 contained sufficient measures to allow acquisition of small parcels of property for the different schemes of the extent and magnitude which had to be considered in the past Even then, the law with regard to compensation did not remain static from the days of the Act of 1870 to 1923 In the Act of 1894 the date of declaration under section 6 was made to take the place of the date in section 24 of the Act of 1870 Under the Act of 1870 the market value of the land at the time of awarding compensation was the criterion The date for the assessment of compensation was further shifted to the date of the notification under section 4 only in 1923

The Legislature might well have provided in the Act of 1894 that it would be open to the appropriate Government after issuing a notification under section 4 to consider objections raised under section 5 with regard to different localities from time to time enabling different reports to be made under section 5-A with consequent adjustments in section 6 providing for declarations to be made as and when each report under section 5-A was considered By the validation of actions taken under section 6 more than once in respect of a single notification under section 4, the original scheme of acquisition is not altered. The public purpose behind the notifica-

tion under section 4 remains the same. It is not as if a different public purpose and acquisition of land for such purpose were being interpolated by means of the Validating Act The principle of compensation remains the same under the Validating Act as it did under the principal Act of 1894. Only the shortcomings in the Act as to want of provision to enable more than one declaration under section 6 is being removed. In our opinion, the Validating Act does not fall within the mischief pointed out by this Court in various decisions starting from the *State of West Bengal* v. *Mrs. Bela Banerjee*[1]

Entry 42 in List III of the Seventh Schedule before its amendment read ·

"Principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose is to be determined, and the forms and the manner in which such compensation is to be given"

In *Mrs Bela Banerjee's case*[1], section 8 of the impugned West Bengal Land Development and Planning Act, 1948 provided that the compensation to be awarded for acquisition of land was not to exceed the market value thereof on 31st December, 1946 This provision was held to be arbitrary by this Court inasmuch as it fixed the ceiling on compensation by reference to the market value of the land on the abovementioned date no matter when and how long afterwards the acquisition took place Similarly in dismissing the appeal of the State in *State of Madras* v. *D. Namasivaya Mudaliar*[2], where the Madras Act XI of 1953 provided that compensation was payable on the basis of the valuation of the land on 28th April, 1947, together with some improvements made thereon up to the date of notification under section 4 (1) of the Land Acquisition Act because of the discovery of the presence of lignite in certain taluks in 1947 and the announcement by Government by a press note that it proposed to undertake legislation to compel persons purchasing such lands after date to be prescribed in 1947, it was held that

"a law which authorises acquisition of land not for its true value, but for value frozen on some date anterior to the acquisition, on the assumption that all appreciation in its value since that date is attributable to purposes for which the State may use the land at some time in future, must be regarded as infringing the fundamental right" and "there was no true relation between the acquisition of the lands. . and the fixation of compensation based on their value on the market rate prevailing on 28th April, 1947"

Referring to the provision in the Land Acquisition Act for assessment of compensation on the basis of the market value of the land not on the date on which the interest of the owner was extinguished under section 16 but to the date of the notification under section 4 (1) it was observed that

"any principle for determination of compensation denying to the owner all increments in value between a fixed date and the date of issue of the notification under section 4 (1) must *prima facie* be regarded as denying to him the true equivalent of the land which is expropriated"

In our opinion, the Amending Act cannot be said to lay down any principle which suffers from the vice of the Acts struck down in the above decisions. The date of valuation is that of the issue of notification under section 4 (1)—a principle which has held the field since 1923 It is true that the underlying principle of the Act of 1894 was that all increments due to the setting on foot of the acquisition proceedings were to be ignored whereas due to the ever spiralling of all prices all over India land values are mounting up all the time in all the States, specially round about big cities—an occurrence quite unconnected with the issue of a notification under section 4 (1)—but it cannot be said that because owners of land are to be deprived of all the increments due to the latter phenomenon it must be held that

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1. (1954) S C J 95 (1954) S C R 558 (1954) 1 M L J 162
2 (1964) 6 S C R 936 (1965) 2 An W.R. (S C) 82 (1965) 2 M L J (S C) 82 (1965) 2 S C J 563

there is a violation of Article 31 (2) Legislative competence to acquire land under the provisions of the Land Acquisition Act cannot be challenged because of constant appreciation of land values all over the country due to the prevalent abnormal inflation There must be some time lag between the start and conclusion of land acquisition proceedings and in principle there is nothing wrong in accepting the said start as the date for valuation Sections 4 and 23 of the Land Acquisition Act are protected by Article 31 (5) (*a*) of the Constitution Only sections 5-A and 6 of the Act have been amended The amendments do not alter the principle of compensation fixed by the Act nor contravene Article 31 of the Constitution in any way.

The Amending Act does not really derogate from the principle that the valuation on the date of issue of notification affords the criterion for determining compensation of all lands to be acquired It only keeps alive the said notification for sustaining more than one declaration under section 6 to meet the exigencies of the situation where it was not possible to make one comprehensive declaration under section 6 and where the State has been obliged to validate actions which could not be supported under the principal Act. It cannot be said of the Validating Act that it was fixing an arbitrary date for the valuation of the property which bore no relation to the acquisition proceedings At the same time when the notification under section 4 was issued on 13th November, 1959, the State had considered that a very large area round about Delhi would have to be acquired so that the development of the city could proceed in an orderly manner step by step not only to meet the immediate needs of the then population of the city but with an eye to the ever-increasing demands of the exploding population in all cities in India and specially in its capital It was before November, 1959 that the State had to consider the acquisition of a large trace of land for the purposes of development of Delhi but it was not possible, to take up simultaneously all schemes for the future development of the city. It was also not practically possible to take up all schemes in all directions at the same time The resources of the State were not adequate to take up the scheme for improvement of the city by the acquisition of an area like acres 34,000—00, at the same time keeping in mind not only the need of land for housing purposes but also for other purposes like education, industry and manufacture not to speak of amenities for recreation, entertainment etc Of necessity, the area under the proposed acquisition would have to be carved into blocks and the development of one or more blocks at a time could only be taken up in consonance with the resources available Even contiguous blocks could be developed gradually and systemactically. If a particular area, say block '*A*' was meant to provide lands for building houses for residential purposes only a block contiguous thereto, say block '*B*' might be set apart for industrial purposes There may be nothing common between block '*A*' and block '*B*' to require their simultaneous development although both the blocks would form part of a composite whole—to serve the needs of a growing city Can it be said that acquisition of lands for block '*A*' and block '*B*' must be made simultaneously and is the law to be struck down because it enables a declaration under section 6 with respect to block '*B*' to be made some time after a similar declaration in respect of block *A*? In such a case, it would be incongruous to award compensation for lands acquired in block '*B*' on a basis different from that in respect of lands in block '*A*' covered by an earlier declaration under section 6 The scope of Article 31 (2) as amended was considered by this Court in *P V Mudaliar* v *Deputy Collector*[1]. It was there pointed out that after the amendment

> "what is excluded from the Courts' jurisdiction is that the said law cannot be questioned on the ground that the compensation provided by that law is not adequate ,"

and

> "if a law lays down principles which are not relevant to the property acquired or to the value of the property at or about the time it is acquired, it may be said that they are not principles contemplated by Article 31 (2) of the Consitution"

1 (1965) 1 S.C.R 614 : (1964) 2 S C J 703 : (1964) 2 M.L.J. (S C) 173 (1964) 2 An W R. (S C) 173

In that case it was also observed by this Court that

> " in the context of continuous rise in land prices from year to year depending upon abnormal circumstances it cannot be said that fixation of average price of over five years is not a principle for ascertaining the price of the land in or about the date of acquisition "

The decision is also an authority for the proposition that the omission of one of the elements that should properly be taken into account in fixing the compensation might result in the inadequacy of compensation but such omission in itself did not constitute fraud on power It is also to be noted that in this case this Court upheld the Land Acquisition (Madras Amendment) Act, 1961 although the said Act substituted a new clause for the first clause in section 23 (1) of the Land Acquisition Act The substituted clause provided for payment of compensation on the basis of the market value of the land at the date of the publication of the notification under section 4 (1) or an amount equal to the average market value of the land during the five years immediately preceding such date, whichever was less It is significant that the Act which was a post-Fourth Constitution Amendment Act, was upheld although by its own terms and independently of the Land Acquisition Act it provided for payment of compensation on the basis of the market value of the land at the date of the publication of the notification under section 4 (1). It may therefore be inferred that in upholding the Land Acquisition (Madras Amendment) Act, 1961, this Court was of the view that the principle of fixing compensation on the basis of the price prevailing on the date of the notification under section 4 (1) of the Land Acquisition Act was a relevant principle. In the result the Court turned down the contention about the violation of Article 31 (2) because of the modification of some of the principles for assessing compensation laid down in section 23 of the Act

In the present case, there has been no variation of the law formulated in section 23 of the Act As such, in our opinion, there has been no violation of Article 31 (2) merely because the actions already taken have been sought to be validated. Nor are we satisfied that there has been any colourable or fraudulent exercise of legislative power

With regard to the question as to discrimination violative of Article 14 it goes without saying that whenever an Amending Act is passed, there is bound to be some difference in treatment between transactions which have already taken place and those which are to take place in the future That by itself will not attract the operation of Article 14 Again, even with respect to transactions which may be completed in the future, a reasonable classification will not be struck down as was held by this Court in *Jalan Trading Co.* v *Mazdoor Union*[1] :

> " If the classification is not patently arbitrary, the Court will not rule it discriminatory merely because it involves hardship or inequality of burden With a view to secure a particular object a scheme may be selected by the Legislature wisdom whereof may be open to debate ; it may even be demonstrated that the scheme is not the best in the circumstances and the choice of the Legislature may be shown to be erroneous, but unless the enactment fails to satisfy the dual test of intelligible classification and rationality of the relation with the object of the law, it will not be subject to judicial interference under Article 14 Invalidity of legislation is not established by merely finding faults with the scheme adopted by the Legislature to achieve the purpose it has in view "

Before scrutinising the provisions of the Amending Act, we must examine the objects of the Act They may be summed up as follows —

(*a*) To amend the Act for the future by empowering the making of more than one declaration under section 6 ;

(*b*) To validate completed acquisitions on the basis of more than one declaration under that section

1. (1967) 1 SCR 15 at 36 . (1967) 1 SCJ 189

(*c*) To authorise more than one declaration under the said section in cases where there is already in existence a notification under section 4

(*d*) To prescribe a time limit for future acquisitions as also pending proceedings not yet completed, and

(*e*) To provide additional compensation by way of interest in all cases where acquisition has not yet been completed and where a declaration under section 6 is issued more than three years after the notification under section 4

There is nothing arbitrary or irrational about the said objects It is well known that in some cases there has been unusual delay in the issue of declaration under section 6 after a notification under section 4 The Amending Act puts an end to this harsh treatment by providing that in respect of notifications under section 4 made before the date of the Ordinance *i e*, 20th January, 1967, a declaration under section 6 must be made within two years after that date If such a declaration is not made, then it will not be open to Government to make use of the old section 4 notification and the State would be obliged to issue a fresh notification under section 4 The Act also limits the time within which a declaration under section 6 may be made when a notification under section 4 is issued after 20th January, 1967, This period is limited to three years there having been no time limit in the past We are not impressed by the argument that a person whose land may be covered by a notification under section 4 issued more than one year before 20th January, 1967, would seemingly be treated differently from a person whose land comes under the notification under section 4 after that date The Legislature has sought to improve upon the existing provisions of the Land Acquisition Act and there is no discriminatory treatment which should be struck down as violative of Article 14 The Legislature in its wisdom thought that some time limit should be fixed in respect of section 4 notifications issued before 20th January, 1967, and that a time limit should also be fixed for acquisition where such a notification is issued after that date No fault can be found with the Legislature because it has provided for a period of two years in one case and three years in the other. As was pointed out in *Jalan Trading Co* v. *Mazdoor Union*[1]:

"Equal protection of the laws is denied if in achieving a certain object persons, objects or transactions similarly circumstanced are differently treated by law and the principle underlying that different treatment has no rational relation to the object sought to be achieved by the law"

It is not possible to say that because the Legislature thought of improving upon the Act of 1894 by prescribing certain limits of time as from 20th January, 1967, the difference in treatment in cases covered by notification before the said date and after the said date denies equal protection of laws because the transactions are not similarly circumstanced Some of the notifications issued under section 4 must have been made even more than 3 years before 20th January, 1967, and such cases obviously could not be treated in the same manner as notifications issued after that date. Article 14 does not strike at a differentiation caused by the enactment of a law between transactions governed thereby and those which are not so governed. As was pointed out by this Court in *Hatisingh Manufacturing Co, Ltd* v *Union of India*[2]:

"When Parliament enacts a law imposing a liability as flowing from certain transactions prospectively, it evidently makes a distinction between those transactions which are covered by the Act and those which are not covered by the Act, because they were completed before the date on which the Act was enacted"

With respect, the dictum can also be applied as between cases where the transaction was in the course of completion and those which had to be started after a particular date. On the whole the Amending Act seeks to improve the legislation which covered the field of acquisition of land The Legislature might have made more liberal provisions for improvement but it is not for this Court to strike down a piece of legislation because the improvement falls short of the expectation of the litigants.

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1. (1967) 1 S C R. 15 at 36; (1967) 1 S C J 189 2 (1960) 3 S C R 528 at 543

With regard to the provision for payment of interest, in addition to compensation or by way of additional compensation no grievance can be made in that interest is not allowed in respect of transactions which have been already completed and compensation taken. The Legislature felt that because there has been unreasonable delay in the payment of compensation, interest should be allowable where the period of three years has already expired or may expire between the date of section 4 notification and the date of declaration under section 6. No grievance can be made because interest is denied to persons who have already taken the compensation. Even here the classification is not unreasonable and cannot be said to be unrelated to the object of the Act.

As regards violation of Article 14, in the case of Sohan Lal who filed Writ Petition No 85 of 1967 the learned Solicitor General drew our attention to a few facts which are not clearly brought out in the affidavit in opposition and will be referred to presently. Here the attack is on an executive act, namely, the differential treatment meted out to 16 colonies whose lands were covered by the notification dated 13th November, 1959, but in respect of which de-notification orders were issued subsequently. It would appear that some of the letters which were received by Sohan Lal did not bring out the full facts and the policy underlying the apparent discrimination in this case. It is pointed out in paragraph 36 of the affidavit in opposition :

> " After the issue of the notification No. F 15 (111) 59-LSG dated 13th November, 1959, it was decided by the Government that the colonies in respect of which the layout and service plans had been sanctioned before the date of notification *viz*, 13th November, 1959, may be released from the purview of acquisition The petitioner's colony known as Kanwal Park could not be released from the purview of acquisition because in its case only the lay out plans had been sanctioned and not the service plans "

This policy is corroborated by the records of the Land and Housing Department, Delhi Administration which were made available to us at the hearing It appears from that record that after the notification of 13th November, 1959, private owners of land who wanted to lay-out colonies and had taken steps in respect thereof by making some arrangement and spent money—thereon had approached the Administration for release of their lands from the notification and a proposal for de-notification of the colonies was considered at a high level. It appears that a meeting was held on 29th June, 1960, at which were present a number of persons including the Chief Secretary, Vice Chairman, Delhi Development Authority, Engineer Member, Architect, Town Planning Organisation, Deputy Commissioner, Delhi Municipal Corporation, Architects of Delhi Municipal Corporation, Secretary Local Self Government and Under Secretary to the State Government The records show that the case of each notified colony was considered separately and it was felt that cases in which the lay-out and service plans had beenfinally approved in all respects before 13th November, 1959, should be recommended for de-notification On 1st of July, 1960, the Commission, Delhi Municipal Corporation went into the matter and recommended that .

> " All those colonies in respect of which both lay-out plans and service plans had been approved by the Delhi Development (Provisional) Authority, the Delhi Development Authority or the Delhi Municipal Corporation may be de notified irrespective of whether security was demanded or not and whether the time limit for completion of development was imposed or not and irrespective of whether security has been paid or not and whether development has been completed or not "

According to this recommendation, 16 colonies named therein fell in this category. Sohan Lal's colony was not one of those sixteen.

It is unfortunate that the petitioner who submitted the lay out plan of the colony as early as 18th June, 1956, had not the service plan approved before 13th November, 1959 It is clear from the annexures to the petition that the details of the lay-

out of the colony were submitted on 30th August, 1956. The petitioner submitted service plans on 15th September, 1959 There was nothing wrong with the plans intrinsically except that there were more than one small pocket of land within the colony to which the petitioner could not prove his ownership satisfactorily. Mr. Agarwala appearing for the petitioner submitted that the only difficulty was that in respect of the small pockets they were owned not by the petitioner alone but in co-ownership with others and the petitioner subsequently excluded these pockets from the purview of his lay-out plan , but this w s done only on 19th March, 1961. The petitioners' subsequent efforts to have his colony de-notified were of no avail even though he had excluded these pockets on 20th Janu ry, 1960 On these facts, we cannot hold that the petitioner was subjected to any discrimination There was a policy behind the de-notification and it has not been suggested that the policy was vitiated by any *mala fides* on the part of the authorities.

All the points urged by the petitioners, therefore, fail and the petitions will stand dismissed There will be no order as to costs

Shelat, J (On behalf of himself and *Vaidialingam, J*) :—The facts in these five writ petitions have been sufficiently set out by our learned brother Mitter, J , in his judgment and therefore need not be repeated here Though they differ in some particulars, the contentions raised by Counsel for the petitioners are common except the additional contentions raised by Mr Mani in Writ Petition No 223 of 1966 and by Mr Agarwala in Writ Petition No 85 of 1967

These writ petitions arise as a result of and challenge *inter alia* the validity of the following notifications On 13th November, 1959, the Chief Commissioner, Delhi, issued a notification under section 4 of the Land Acquisition Act I of 1894 (hereafter referred to as the Principal Act) notifying that land measuring 34,070 acres marked in blocks *A* to *T* and *X* in the map enclosed therewith was required by the Delhi Administration for the planned development of Delhi In pursuance of that notification, the Delhi Administration issued section 6 notification dated 14th June, 1961,in respect of the land situate in village Kilkori measuring 97 bighas 14 biswas only from out of the said notified area The notification directed the Collector to take order for its acquisition under section 7 of the Act The Collector thereafter made his award on 31st August, 1961, in respect of the said 97 bighas of land at Rs. 2,500 a bigha, the total amount including the solatium awarded b ing Rs. 2,80,887 50. Nothing thereafter was done till 18th March, 1966, when another notification under section 6 was issued in respect of 1,752 2 bighas of land situate in Mandawali Fazilpur, Khuraj Khas and Shakarpur Khas

On 9th February, 1966, this Court delivered its judgment in *M P. State* v. *V. P. Sharma*[1], where facts were similar to the facts in the present cases and where the land was required for the erection of a steel plant in public sector In that case the notification under section 4 co ering land in eleven villages was issued in May, 1949 This was followed by several notifications under section 6, the last of them being in 1960 After examining the provisions of sections 4, 5-A and 6 of the Act, this Court declared as follows :—

"At the stage of section 4, the land is not particularised but only the locality is mentioned; at the stage of section 6 the land in the locality is particularised and thereafter the notification under section 4 (1) having served its purpose exhausts itself The sequence of events from a notification of the intention to acquire under section 4 to the declaration under section 6, leads to the conclusion that once a declaration under section 6 particularising the area is issued, the remaining non-particularised area in the notification under section 4 (1) stands automatically released. The intention of the legislature was that one notification under section 4 (1) should be followed by survey under section 4 (2), objections under section 5-A heard, and thereafter, one declaration under section 6 issued. If the Government requires more land in that locality, there is nothing to prevent it from issuing another notification under section 4 (1) making a further survey

1. (1966) 2 S.C J. 231 : (1966) 3 S.C.R 557.

if necessary, hearing objections and then making another declaration under section 6, whereas there is likely to be prejudice to the owner of the land if there is great delay between the notification under section 4 (1) and section 6 "

One of the contentions urged in that case was that where the land is required for a small project and the area is not large the Government may be able to make up its mind once for all what land it needs but where land is required for a large project requiring a large area of land, Government may not be able to make up its mind at once. This contention was rejected on the ground that even if it be so, there is nothing to prevent the government from issuing another notification under section 4 followed by a notification under section 6, that the governments' power to acquire land in a particular locality is not exhausted by issuing one notification under section 4 (1) followed by a notification under section 6 and that it can proceed to do so by a fresh notification under section 4 (1) and a fresh declaration under section 6 and that such a procedure would be fair to all concerned Sarkar, J, who delivered a separate judgment also repelled the contention by observing that he could not

" imagine a Government which has vast resources not being able to make a complete plan of its project at a time. Indeed, I think, when a plan is made it is a complete plan I should suppose that before the Government starts acquisition proceedings by the issue of a notification under section 4 it has made its plan for otherwise it cannot state in the notification, as it has to do, that the land is likely to be needed Even if it had not then completed its plan it would have enough time before the making of a declaration under section 6 to do so. I think therefore that the difficulty of the Government, even if there is one, does not lead to the conclusion that the Act contemplates the making of a number of declarations under section 6 "

In the view taken in *Sharma's case*[1], section 6 notification dated 18th March, 1966, was invalid as section 4 notification dated 13th November, 1959, on which it was founded ceased to be efficacious and became exhausted after section 6 notification dated 14th June, 1961, was issued and the rest of the land not covered by it became as a result released from acquisition depending on the declaration of law made in this decision the petitioners filed these writ petitions in April, 1966 and thereafter.

Realising that if the view taken in *Sharma's case*[1], were to stand the Government would have to issue a fresh section 4 notification and would have to pay compensation on the basis of the market value of the land on the date of such new notification instead of on 13th November, 1959, the Government promulgated an Ordinance dated 20th January, 1967, called the Land Acquisition (Amendment and Validation) Ordinance 1 of 1967 It is not necessary to set out the provisions of the Ordinance as it has been substituted by Land Acquisition (Amendment and Validation) Act, XIII of 1967 (hereinafter referred to as the Amendment Act) passed on 12th April, 1967. There can be no manner of doubt that the Ordinance and the Amendment Act were enacted with the object of setting at naught the decision in *Sharma's case*[1].

Section 2 of the Amendment Act substituted the following words in section 5-A, (2), *viz*,

" Submit the case for the decision of an appropriate Government together with the record of the proceedings held by him and a report containing his recommendations on the objections," by the following words *viz*, ' either make a report in respect of the land which has been notified under section 4, sub-section (1) or make different reports in respect of different parcels of such land ' "

Section 3 added the following words in section 6 (1) after the words " certify its order," *viz*

" and different declaration may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section

1. (1966) 2 S C J. 231 . (1966) 3 S C.R 557.

(1) irrespective of whether one report or different reports has or have been made (wherever required) under section 5-A, sub-section (2) "

Section 3 also substituted the existing proviso to section 6 (1) by the following:—

" provided that no declaration in respect of any particular land covered by a notification under section 4 (1) published after the commencement of the said ordinance (after 20th January, 1967) shall be made after the expiry of three years from the date of such publication "

Section 4 (1) of the Amendment Act is a validating provision. By clause (*a*) it provides that no acquisition purporting to have been made before the commencement of the said Ordinance (*i e*, before 20th January, 1967) and no action taken or thing done including any notification published in connection with such acquisition shall be deemed to be invalid or ever to have become invalid on the ground that.

(*i*) one or more Collectors have performed the functions of Collector in respect of the entire land covered by section 4 notification

(*ii*) one or more reports have been made under section 5-A (2) whether in respect of the entire land or different parcels thereof covered by the same notification, and

(*iii*) that more than one declaration are made under section 6 in respect of different parcels of land covered by the same notifiction under section 4 (1).

Clause (*b*) of section 4 (1) provides that any acquisition in pursuance of a section 4 notification published before 20th January, 1967, may be made after that date and no such acquisition and no action taken or thing done including any order, agreement or notification made or published whether before or after 20th January, 1967, in connection with such acquisition shall be deemed to be invalid merely on the said grounds mentioned in clause (*a*)

Sub-section (2) of section 4 provides that no declaration under section 6 shall be made in respect of land covered by section 4 notification published before 20th January, 1967, after the expiry of two years from that date, that is, 20th January, 1969 Section 4 (3) provides for payment of interest in the circumstances set out therein.

The result of the Amendment Act clearly is that an area of land notified under section 4 (1) can be acquired piecemeal at any time, the only restriction being that under section 3 in case of land covered by a section 4 notification published after 20th January, 1967, section 6 notification can be issued within 3 years from the date of such notification and in respect of land notified under section 4 (1) before 20th January, 1967 within two years after 20th January, 1967. The direct consequence of the Amendment Act is that the unitary character of acquisition by a single inquiry, a single report, a single declaration and a single award under the Principal Act is done away with. The government can freeze an area by issuing a section 4 notification and can, subject to the limitations in section 3 and section 4 (2) of the Amendment Act, go on acquiring parcels of such area at its convenience irrespective of the time when it makes up its mind to acquire and pay compensation on the basis of the value at the date of section 4 notification. In the case of land notified under section 4 (1) after 20th January, 1967, the owner is deprived of appreciation in the value of his land during three years by reason of limitation prescribed in section 3 but in the case of land notified before 20th January, 1967 such deprivation can be for an uncertain period from the date of section 4 notification up to two years from 20th January, 1967, *i e.*, upto 20th January, 1969 depending upon when its acquisition is made As has happened in the instant cases the entire area of 34,070 acres was frozen for the purpose of computation of compensation as from 13th November, 1959, portions of that area were acquired as late as 1966 and the remaining area can still be acquired until 20th January, 1969, each owner being thus deprived of the appreciation in value of his land depending upon when during all this long period the Government decides to acquire it Thus, if the land is notified in 1959 and is acquired in 1960, the loss of appreciation in value is only of one year. But

the owner of another plot even if it is contiguous to it, if the Government decides to acquire it in 1969, would be deprived of the appreciation in value which has taken place right from 1959 to 1969 The entire area is in the meantime frozen both for the purpose of compensation and as pointed out in *Sharma's case*[1], from its full beneficial enjoyment, the owner not knowing until Government chooses to make section 6 declaration whether it will ultimately be acquired or not. Under the Principal Act as construed in *Sharma's case*[1], once a section 6 notification is issued section 4 notification would become exhausted and the land not declared as needed thereunder would be relieved from acquisition. If Government then desires to acquire any land in addition to the one so declared it would have to be notified afresh and the Government would be obliged to pay compensation at the market arte prevailing on such date The practical effect of the Amendment Act is that by keeping alive section 4 notification and by declaring the declarations made after the first declaration valid the Legislature dated back the basis of compensation which would have been, but for this validation, the date on which a fresh section 4 notification would have become necessary The real purpose of enacting section 4 is thus to enable Government to freeze an unlimited area by first notifying it under section 4 and then to acquire bit by bit and pay compensation at the rate prevailing at the date of section 4 notification howsoever belatedly it may choose to acquire such bits provided it does so before 20th January, 1969 where the land is notified before 20th January, 1967 and before the expiry of three years where section 4 notification is issued after 20th January, 1967 and thus avoid compensating the appreciation in value in the meantime to which the owner would have been entitled to Though in form the Amendment Act purports to validate acquisitions including orders and declarations made therefor, the real purpose of enacting the Amendment Act is to avoid having otherwise to compensate for the appreciation in the land value during the intervening period It is a well-settled principle that in determining the constitutionality of a provision impugned on the ground of its being an invasion on a fundamental right the Court must weigh not its form which may apparently look innocuous but its real effect and impact on such fundamental right (cf. *Re Kerala Education Bill*[2]; *Gajapati Narayan Deo* v *State of Orissa*[3].

It will be seen that sections 2 and 3 which enable piecemeal and multiple inquiries and reports of a Collector or Collectors under section 5-A, diverse declarations, and awards in respect of different parcels of land covered by section 4 notification are prospective It is only section 4 which is made retrospective. But it merely seeks to nullify the decision in *Sharma's case*[1] and purports to keep alive section 4 notifications which would have otherwise lost their efficacy and validates acquisitions including orders and section 6 declarations purported to have been made on the basis of such section 4 notifications. Section 4, however, does not contain any provision retrospectively amending section 4 or section 5-A or section 6 and merely seeks to revitalise section 4 notifications already exhausted. The section does not also provide that an acquisition or an order or declaration under section 6 made on the basis of such exhausted notification will be deemed to have been made or issued under sections 2 and 3 of the Amendment Act and as if the Amendment Act was in force at that date as is usually done in such validating Acts. A notification under section 4 having exhaused itself after a declaration under section 6 in respect of a part of the land covered by it and the rest of the land being relieved from acquisition, there would be *prima facie* no basis for a section 6 declaration or acquisition unless such notification is retrospectively validated by a supporting amendment of section 4 of the Principal Act or by making sections 2 and 3 of the Amendment Act retrospective and by a fiction deeming it to have been made under such amending provision

Counsel for the petitioners raised the following contentions:

(1) that Act XIII of 1967 does not revive section 4 notification dated 13th November, 1959 which became exhausted after the first section 6 declaration in

1. (1966) 2 S C J 231 (1966) 3 S C R 557
2. (1959) S.C.R. 995 (1959) S C.J. 321.
3. (1953) S C J 592 . (1954) S.C.R. 1 : A.I.R. 1953 S.C 375.

1961 was made and therefore no acquisition in respect of the rest of the land could be made without a fresh section 4 notification The contention was that sections 2 and 3 being prospective they did not resuscitate the section 4 notification though subsequent acquisitions including orders and declarations under section 6 are validated and that such validation has no efficacy as there would be no basis by way of a section 4 notification for such acquisition or order or declaration

(2) that Act XIII of 1967 is in derogation of the requirements of Article 31 (2) as it purports to authorise acquisition without a fresh section 4 notification thereby allowing compensation to be paid on the basis of an exhausted section 4 notification and on the value of the land prevailing on the date of such exhausted notification;

(3) that the Amendment Act is in violation of Article 14 in that

(*a*) where a section 4 notification is made before 20th January, 1967, section 6 declaration can be made within 2 years from the said date, *i e*, on or before 20th January, 1969 But where the land is notified after 20th January, 1967 section 6 declaration would have to be made within 3 years from the date of such notifiction In the former case a much longer period is provided for a section 6 declaration than in the latter case,

(*b*) where a section 4 notification is made after 20th January, 1967, compensation would be fixed on the basis of the value on that date but where a section 4 notification is made before 20th January, 1967, compensation would be on the basis of the value on the date of the exhausted notification howsoever long a period has elapsed since such notification.

(*c*) if compensation has not been paid before 20th January, 1967, interest has to be paid on the compensation amount, but if compensation has been paid before 20th January, 1967 no interest is payable though acquisition in both the cases springs from the same section 4 notification,

(*d*) in the case of section 4 notification issued after 20th January, 1967, if section 6 declaration is not made within three years a fresh section 4 notification is necessary and compensation would be on the basis of the value on the date of such fresh notification but where a section 4 notification is issued before 20th January, 1967 there is no defined period and section 6 declaration can be made until 20th January, 1969 Therefore the owner gets compensation on the value at the date of section 4 notification howsoever long the intervening period may be. A person affected by section 4 notification issued after 20th January, 1967, is thus differently treated than the one who is affected by such a notification issued before 20th January, 1967. In Writ Petition No 85 of 1967 an additional point was raised, *viz*, that though 16 colonies in village Kilkori were denotified under section 48, the land of the petitioner though situate within the same notified area was not denotified thus wrongly discriminating him In Writ Petition No. 223 of 1966, Mr. Mani contended that the Amendment Act merely seeks to reverse the decision of this Court, that the Act is not a legislative but a judicial act and that though the Constitution has not brought about separation of powers nonetheless it does not confer unlimited powers on the Legislature to encroach upon the judicial power. In other words, the Legislature seeks to control the Courts' function by requiring of them a construction of law according to its views The legislative action cannot be made to retroact upon past transactions and controversies and reverse decisions which the Courts in exercise of their undoutbed authority have made, for, that would mean not only exercise of a judicial function but in effect to sit as a Court of review to which the past transactions and controversies are referred to. The question as formulated by him is whether a statute which simply validates acts and orders pronounced upon by a Court as invalid is sustainable without a retrospective law providing that such acts and orders are deemed to have been made under the validating Act and as if such validating Act was in existence at the date of such acts and orders.

On the question whether the Amendment Act is in derogation of the requirements of Article 31 (2), the contention of the Solicitor-General was that it is not the law contemplated by Article 31 (2) as it merely amends sections 5-A and 6 of the Principal Act and does not touch either section 4 or section 23 which deal with compensation, that it amends only the procedural provisions and that section 4 thereof merely validates acquisitions including orders and notifications purported to have been made or passed to get over the difficulty created by *Sharma's case*[1].

The impugned Act does not frankly deal with compensation But as already stated it is not the form of a statute under challenge which matters but its substance and the direct impact it has on the constitutional requirements Though sections 2 and 3 amend sections 5-A and 6 of the Principal Act enabling multiple inquiries, reports and declarations in respect of different parcels of land notified under section 4, the validating provisions of section 4 have a direct impact on the question of compensation payable under the Act Where a section 4 notification has been issued at any time before 20th January, 1967, as has happened in the instant cases, a large area can be notified under section 4, say, in 1959, and yet section 6 declarations can be made by reason of section 4 of the impugned Act at different times and as late as 1969 Yet, the compensation would be on the value in 1959 irrespective of the fact that such value has appreciated in the meantime due to the general spiralling of prices and not as a consequence of its having been notified under section 4 It is manifest that but for the validating provisions of section 4 of the Amendment Act Government would have had either to proceed with the acquisition of the whole of the notified land or to proceed with part of it and thus exhaust the section 4 notification and release the rest of the land from acquisition If further lands is subsequently needed a fresh notification under section 4 would have been necessary and compensation would have to be paid on the basis of the value on that date. The impugned Act enables Government to acquire the land once it is notified under section 4 in different parcels and if the notification is of a date prior to 20th January, 1967 pay the same compensation depriving the owner of the appreciation of value during the intervening period Such appreciation would have had to be compensated for but for section 4 of the impugned Act Each parcel of land in an area notified under section 4 would thus be dealt with differently depending on at what point of time it is acquired A piece of land would fetch compensation at X amount even though its market value has doubled by the time section 6 declaration in respect of it is made Another piece of the very same land would be awarded the same compensation even if the appreciation in its value is four-fold only because Government can now acquire it at a subsequent date The deprivation of the appreciated value to different owners or to the same owner if both the parcels of land belong to the same individual would vary depending upon, when Government chooses to acquire each of such parcels Therefore, from the mere fact that the impugned Act does not amend section 4 or section 23 it is not possible to say that it is not an Act dealing with or affecting compensation Besides by amending sections 5-A and 6 and validating acquisitions, orders and declarations the Amendment Act brings about changes of a fundamental character in the Act by converting the unitary character of an acquisition into a diversified one, in that instead of one inquiry and one report by the same officer, one declaration under section 6 and one award, it permits several inquiries and several reports by different officers, several declarations and even several awards thus altering the very structure of the Principal Act It is thus impossible to say that the impugned Act is not the law of acquisition contemplated by Article 31 (2).

It was, however, contended that even so, (1) the impugned Act does not alter the principle in section 23 of the Act that compensation is to be fixed on the basis of market value at the date of section 4 notification and that such mode of compensation is based on a long standing principle that the owner is not entitled to any increase in value as a result of the land having been notified, and (2) that the basis of compensation emerging from the Amendment Act has a bearing on the adequacy

1. (1966) 2 S.C.J. 231 : (1966) 3 S.C.R. 557.

of compensation and hence the Court is barred under the amended Article 31 (2) from making any scrutiny.

The principle on which compensation is to be ascertained has undergone changes from time to time. In the Act of 1870, section 24 provided that it should be fixed on the basis of the value at the time of paying compensation That was charged in the Act of 1894 under which the date of section 6 notification was made the crucial date for ascertaining compensation This was changed in 1923 when the market value on the date of section 4 notification was made the measure of compensation. This was done as a section 5-A was then introduced for the first time in the Act. It was felt that the insertion of section 5-A would create a time gap between the notification under section 4 and the actual acquisition The date of section 4 notification was accepted as the crucial date on the principle that in calculating compensation it was fair to exclude appreciation due to the land having been notified for a scheme for which it was sought to be acquired The principle on which appreciation in value after the issuance of section 4 notification was excluded is no longer valid or in accord with the present day realities for it is a notorious fact that prices of properties have been continuously rising for reasons into which it is neither necessary nor relevant to go into. The principle excluding appreciation as a result of section 4 notification has been there for a long time. But the argument that section 23 is not altered by the Amendment Act does not lead us any further, for, the inquiry is what is the impact of the impugned Act on the question of compensation payable to the expropriated owner If the impugned Act had not nullified the decision in *Sharma's case*[1], and had not ruled that section 4 notification would not become exhausted, fresh notification under section 4 would have become necessary and higher compensation would have become payable than now. The fact that neither section 4 nor section 23 is altered therefore does not make any difference.

The impugned Act being a legislation after the 4th Constitution Amendment of 1955 the question as to adequacy of compensation is no longer amenable to judicial scrutiny but the amendment of Article 31 (2) in 1955 has not affected constitutional requirement that no property can be compulsorily acquired except under a law providing for compensation or which provides principles fixing such compensation As to what the term "compensation" in Article 31 means has been the subject-matter of several decisions of this Court and the term as a result acquired a well-settled interpretation In *Bela Banerjee's case*[2], Patanjali Sastri, C J, in repelling the contention that compensation in Entry 42 of List III could not mean full cash equivalent laid stress on the distinction between the word 'compensation' in Article 31 and the said Entry and the words "the acquisition of property on just terms" in section 51 (xxxi) of the Australian Constitution Act and held that compensation meant just equivalent and the principles which should govern the determination of compensation amount to be given to the expropriated owner must ensure that what is determined must be such compensation, *i.e.*, just equivalent. In striking down the proviso to section 8 of the West Bengal Land Development and Planning Act, XXI of 1948, he observed that the fixing of an anterior date which has no relation to the value of the land when it is acquired, may be many years later, cannot but be regarded as arbitrary Similarly in *Namasivaya Mudaliar's case*[3], this Court held, following *Bela Banerjee's case*[2], that any principle for determination of compensation denying the owner all increments in value between a fixed date and the date of section 4 notification must be regarded as denying to the owner the true equivalent of the land which is expropriated and that it is for the State to show that fixation of compensation on the market value on an anterior date does not constitute violation of the constitutional guarantee. This decision was in respect of a law before the 1955 Amendment and the Court expressed no opinion on the question whether it was possible by enacting legislation after the 1955 Amend-

1 (1966) 2 S C J 231 (1966) 3 S C R 557

2 (1954) S C R 558 at 563-64 . (1954) S C J 95 : (1954) 1 M L J. 162.

3 (1965) 2 An W R (S C) 82 (1965) 2 M L J (S C) 82 : (1965) 2 S C J 563 (1964) 6 S C R. 936.

ment to provide that compensation may be fixed on the basis of value prevailing on a certain anterior date. (*cf. Jeejeebhai* v. *Assistant Collector*).[1]

It was thus well settled before the amendment of Article 31 (2) in 1955 that there could not be a valid acquisition unless the law authorising it provided compensation *i.e.*, just equivalent or principles fixing such compensation, *i e*, just equivalent of what the owner is deprived of. The question as to the impact of the 1955 Amendment of Article 31 (2) on this principle arose in *P. Vajravelu Mudaliar* v. *Deputy Collector*[2]. This decision laid down the following propositions —

(*i*) whether the principles laid down in an impugned Act take into account all the elements to make up the true value of the property and exclude matters which are to be included is a justiciable issue,

(*ii*) that the law fixing compensation or laying down principles governing its fixation cannot be questioned on the ground of inadequacy;

(*iii*) that the connotation of " compensation " and the question of justiciability are distinct concepts and should be kept apart while considering the validity of the impugned provision ;

(*iv*) that the fact that the amended Article uses the same words, *viz.*, " compensation " and " principles "—shows that Parliament used them in the sense in which they were construed by this Court, and

(*v*) that the Legislature must provide for a just equivalent or lay down principles fixing such just equivalent and if that is done, such a law cannot be questioned on the ground of inadequacy of compensation

As to how and in what manner the question of adequacy would arise was illustrated by giving various examples. Article 31 (2) as amended means therefore that if the impugned Act either fixes just equivalent as compensation or lays down principles for fixing such just equivalent it cannot be impeached on the ground that such compensation is inadequate or that when working out those principles the resultant compensation is inadequate. But this does not mean that the amendment permitted the Legislature to fix inadequate compensation or to lay down principles fixing compensation which is not just equivalent. Such a theory attributes and intention to the Legislature to enact a law in terms of contradiction, for, compensation which is not just equivalent is no compensation as interpreted by this Court and understood when Article 31 (2) was amended and giving any such meaning to that Article would be contrary to the well-settled principle of construction that where the Legislature uses in an Act a legal term which has received judicial interpretation it must be assumed that it is used in the sense in which it has been judicially interpreted unless a contrary intention appears. At page 629 of the report it has clearly been laid down that

> " If the Legislature, though *ex facie* purports to provide for compensation or indicates the principles for ascertaining the same but in effect and substance takes away a property without paying compensation for it, it will be exercising power which it does not possess. If the Legislature makes a law for acquiring a property by providing for an illusory compensation or by indicating the principles for ascertaining the compensation which do not relate to the property acquired or to the value of such property at or within a reasonable proximity of the date of acquisition or the principles are so designed and so arbitrary that they do not provide for compensation at all one can easily hold that the Legislature made the law in fraud of its powers."

Following this decision, this Court held in the *Union of India* v. *Metal Corporation of India*[3], that the principles laid down in the impugned Act were not in accord with Article 31 (2) and that an acquisition law

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1 (1965) 1 S C R 636

2 (1964) 2 S C J 703 : (1965) 1 S C R 614 (1964) 2 M.L J (S.C.) 173 · (1964) 2 An.W.R. (S C) 173

3 (1967) 1 Comp L J 43 (1967) 1 S C.J. 182 : (1967) 1 S.C.R. 255.

"to justify itself has to provide for the payment of a just equivalent to the property acquired or lay down principles which are not arbitrary but which are relevant to the fixation of compensation. It is only when the principles stand this test that the adequacy of the resultant compensation falls outside the judicial scrutiny under the second limb of Article 31 (2)."

It is true that in *Vajravelu's case*[1], it was held that in the context of the continuous rise in land prices, fixation of an average price over 5 years amounted to ascertaning the price of the land in or about the date of acquisition and that omission of one of the elements which should properly be taken into account for fixing compensation though resulting in inadequacy of compensation would not constitute fraud on power. But there is no analogy between the provisions of the impugned Act in that case and the instant cases Though that Act varied the method of ascertainment of compensation provided by section 23 of the Principal Act it provided for taking the average of prices prevailing during the 5 years in or about the date of acquisition By striking the average of prices during those 5 years the Act actually took into account the appreciation in value during the 5 years preceding the acquisition for fixing the compensation The position in the instant cases is quite different The impugned Act does not provide for any such average price as was done in *Vajravelu's case*[1]. Though section 4 apparently validates acquisitions, orders and notifications made on the basis of section 4 notification issued before 20th January, 1967, in effect and substance it seeks to treat such a notification under section 4 which had lost its efficacy and had become exhausted where section 6 declaration has been made for a part of the land covered by such section 4 notification as still outstanding. This is sought to be done without any legislative provision in the impugned Act revitalising the notification which had become dead and inefficacious Such a thing could not be done by merely validating acquisitions, orders and declarations without revitalising by some provision the notifications under section 4 which had become exhausted and on which such acquisition including orders and declarations are founded Nor could it validate inquiries and reports under section 5-A and declarations under section 6, all of which are made on the basis of a notification which was no longer alive except by retrospectively amending section 4 and declaring such section 4 notification as having been made under such amended section 4 Not having so done, the direct result of the validating provisions of section 4 of the impugned Act is to fix compensation on the basis of the market value existing on the date of section 4 notification which had exhausted itself. By validating the acquisitions, orders and declarations made on the basis of such an exhausted notification the impugned Act saves Government from having to issue a fresh section 4 notification and having to pay compensation calculated on the market value as on the date of such fresh notification and depriving the expropriated owner the benefit of the appreciated value in the meantime. The real object of section 4 of the impugned Act is thus to save the State from having to compensate for such appreciation under the device of validating all that is done under an exhausted section 4 notification and thus in reality fixing an anterior date, *i.e.*, the date of such a dead section 4 notification for fixing the compensation. We apprehend that section 4 of the impugned Act suffers from a two-fold vice; (i) that it purports to validate acquisitions, orders and notifications without resuscitating the notification under section 4 by any legislative provision on the basis of which alone the validated acquisitions, orders and declarations can properly be sustained and (2) that its provisions are in derogation of Article 31 (2) as interpreted by this Court by fixing compensation on the basis of value on the date of notifications under section 4 which had become exhausted and for keeping them alive no legislative provision is to be ound in the impugned Act It is therefore not possible to agree with the view that the purpose of section 4 is to fill in the lacuna pointed out in *Sharma's case*[2], nor with the view that it raises a question of adequacy of compensation The section under the guise of validating the acquisitions,

1 (1964) 2 S C J 703 · (1964) 2 M L J. (S.C.) 173 . (1964) 2 An.W.R. (S C) 173.

2 (1966) 2 S C.J 231 (1966) 3 S C R 557

orders and notifications camouflages the real object of enabling acquisitions by paying compensation on the basis of values frozen by notification under section 4 which by part acquisitions thereunder had lost their efficacy and therefore required the rest of the land to be notified afresh and paying compensation on the date of such fresh notifications.

In this view, it is not necessary to go into the other questions raised by the petition and we refrain from expressing any opinion on them. We would declare section 4 as invalid and allow the petitions with costs.

ORDER:—In accordance with the opinion of the majority the petitions are dismissed. No order as to costs.

V.K. ——— *Petitions dismissed.*

THE SUPREME COURT OF INDIA.

(Civil Appellate Jurisdiction)

PRESENT:—S. M. SIKRI, R. S. BACHAWAT AND K. S. HEGDE, JJ.

Kamaraju Venkata Krishna Rao .. *Appellant**

v.

The Sub-Collector, Ongole and another .. *Respondents.*

Andhra Inams (Abolition and Conversion into Ryotwari) Act (XXXVIII of 1956), section 2 (e)—"Charitable institution"—Tank if can be considered to be a charitable institution

Hindu Law—Tank—If a charitable institution.

According to Hindu concept a tank has always been considered as an object of charity Hence under the Hindu law a tank can be an object of charity and when a dedication is made in favour of a tank, the same would be a charitable institution within the meaning of that expression in section 2 (*e*) of the Andhra Inams Abolition Act, 1956.

It would follow that once the conclusion is reached that the Inam in the present case was an Inam in favour of the tank called "*uracheruvu*" that tank must be considered as a charitable institution under the Andhra Inams Abolition Act. Consequently, after the abolition of the Inam, the Inam property gets converted into ryotwari property of the "*uracheruvu*" to be managed by its manager

Appeal from the Order dated the 9th August, 1963 of the Andhra Pradesh High Court in Writ Petition No 431 of 1961.

D Narasaraju, Senior Advocate (*A. Subba Rao* and *K. Jayaram*, Advocates, with him), for Appellant.

B Parthasarathy, Advocate, for Responent No. 1.

T. Satyanarayana, Advocate, for Respondent No. 2.

The Judgment of the Court was delivered by

Hegde, J—A short, nonetheless interesting question of law arises for decision in this appeal by certificate, and that question is whether a tank can be considered as a charitable institution within the meaning of those words in section 2 (*e*) of the Andhra Inams (Abolition and Conversion into Ryotwari) Act, 1956 (XXXVIII of 1956) (to be hereinafter refrred to as the Act)

The Inam with which we are concerned in this case stands abolished under the Act The appellant wants the property comprised in that Inam to be registered in his name His contention is that prior to its abolition he was the Inamdar of that Inam though he had the liability to repair the tank in his village from out of the income of that Inam. The Authorities under the Act have rejected his claim

*C.A. No. 1102 of 1965. · 8th August, 1968.

that he was the Inamdar of the Inam in question They have come to the conclusion that the Inam was in favour of the tank and that he was in possession of the Inam property only as the Manager of the tank which according to them was a charitable institution This conclusion has been upheld by the High Court.

It is not known as to who granted the Inam in question. The grant is lost in antiquity The only evidence we have relating to this Inam are the entries in the Inam Register A copy of that register has been produced in this case. Therein the Inam is shown to have been granted to the tank " *uracheruvu* ". Under column 8 it is mentioned that it was given for repairs of the pond called *uracheruvu* situated close to the village Under column 10 it is mentioned that it is to be in force so long as the repairs of the tank are performed. The ancestor of the appellant was shown to be the Manager of the charitable institution, *viz*, the tank Under the remarks column it is mentioned " The pond is of great use for the cattle and people of the village. The Inam can be confirmed permanently so long as the repairs are performed. The pond for which the Inam was originally granted was situated north to the village and is now out of use At the request of the villagers the late Collector Mr Fraser issued an order in 1819 that the proceeds of this Inam can be applied to the persent existing Kunta which is south to the village and so of use."

Form these entries it is clear that the Inam was granted in favour of the tank known as " *uracheruvu* ". It has been so considered at least ever since 1819. Therefore we are unable to uphold the contention of the appellant that it was a grant in favour of his family subject to the liability to repair the tank It appears that the ancestors of the appellant and at present the appellant is looking after the management of the tank.

Mr. Narasaraju learned Counsel for the appellant contended that even if we cometo the conclusion that the Inam was granted for a charitable purpose,the object of the charity being a tank, the same cannot be considered as a charitable institution. According to him a tank connot be considered as an institution. In support of that contention of his he relied on the dictionary meaning of the term "institution ". According to the dictionary meaning the term " Institution " means " a body or organization or an association brought into being for the purpose of acieving some object ". Oxford Dictionary defines an ' institution ' as " an establishment, or ganisation or association, instituted for the promotion of some object especially one of public or general utility, religious, charitable, educational, etc " Other Dictionaries define the same word as 'organised society established either by law or the authority of individuals, for promoting any object, public or social '. In *Minister of National Revenue* v. *Trusts and Guarantee Co , Ltd.*[1], the Privy Council observed :

> " It is by no means easy to give a definition of the word ' institution ' that will cover every use of it. Its meaning must always depend upon the context in which it is found "

In *Masjid Shahid Ganj and others* v. *Shiromani Gurdwara Prabandhak Committee, Amritsar and another*[2], the Privy Council considered a 'Madrasah " as an institution though it doubted whether the same can be considered as a " juristic personality." This is what the Privy Council observed :

> " A gift can be *made to a madrasah in like manner* as to a masjid The right of suit by the mutwali or other manager or by any person entitled to a benefit (whether individually or as a member of the public or merely in common with certain other persons) seems hitherto to have been found sufficient for the purpose of maintaining Mohomedan endowments At best the institution is but a *caput mortuum*, and some human agency is always required to take delivery of property and to apply it to the intended purposes Their Lordships, with all respect to the High Court of Lahore, must not be taken as deciding that a "juristic personality"

1 L.R. (1940) A C 138 A.I R. 1940 P.C. 116.
2. L R. (1940) 67 I.A. 251 (1940) 2 M L.J. 903:

may be extended for any purpose to Muslim institutions generally or to mosques in particular On this general question they reserve their opinion "

We may at this stage state that the Act has not defined either the expression "charitable institution " or even " institution " Therefore we have to find out the meaning of that term with reference to the context in which it is found We must remember that the expression " charitable institution " is used in a statute which abolishes Inams The Inam in question must undoubtedly have been granted by a Hindu Most of the Inams abolished by the Act were those granted by Hindu Kings in the past According to Hindu conceptions a tank has always been considered as an object of charity In the Tagore Law Lectures delivered in 1892 by late Pandit Prannath Saraswati on " The Hindu Law of Endowments ", he stated :

" From very ancient times the sacred writings of the Hindus divided works productive of religious merit into two divisions named *ishta* and *purta* a classification which has come down to our times So much so that the entire objects of Hindu endowments will be found included within the enumeration of *ishta* and *purta* works In the Rig Veda *ishtapurttam* (sacrifices and charities) are described as the means of going to heaven In commenting on the same passage Sayana explained *ishtapurta* to denote " the gifts bestowed in *srauta* and *smarta* rites ". In the Taittiriya Aranyaka, *ishtapurta* occur in much the same sense and Sayana in commenting on the same explains *ishta* to denote " Vedic rites" like Darsa, Purnamasa etc. and *purta* " to denote *Smarta* works like tanks, wells etc ".

At page 26 he again quotes Vyasa in these words :

" Tanks, wells with flights of steps, temples, the bestowing of food, and groves—these are called purttam "

At page 27, the learned lecturer enumerates the *purta* works. Amongst them is included the construction of works for the storage of water, as wells, baolis, tanks etc. The learned lecturer devotes his tenth lecture to '*purta*'. In the course, of that lecture he again states that the construction of reservoirs of water is classed by Hindu sages amongst the "*purta*" and charitable works In this connection he quotes from various treatises such as

(*i*) Ashwalayana Grihya Parishishta ;
(*ii*) Vishnu Dharmottara ;
(*iii*) Skanda Purana ;
(*iv*) Nandi Purana ;
(*v*) Aditya Purana ;
(*vi*) Yama ;
(*vii*) Mahabharata, etc , etc.

In *Jamnabai* v. *Khimji Vullubdass and others*[1]. Sir Charles Sargent Kt., C J., while interpreting a will observed thus .

" We come to the latter part of clause 6, which directs the building of a well and " avada", (cistern for animals to drink water from), out of the surplus of his fund after providing for the outlay of the two sadavarats and repairing his property. Mr. Justice Jardine considered he could not presume a charitable object in a well and " avada ". Such an object is so frequently the result of charitable intention in Oriental countries, and is so entirely in accordance with the notions of the people of this country that we think that, in the absence of anything to show that the testator intended the well and ' avada ' to be built for the benefit of the property—and there is nothing in the present will to show such intention—they should be presumed to have intended by the testator for the use of the public "

In *V. Mariyappa and others* v *B K Puttaramayya and others*[2] A Division Bench of the Mysore High Court observed thus

1. (1890) I L R 14 Bom. 1 at p. 9.
2. (1957) Mys L J 385 . I L R 1957 My . 291 . A.I R 1958 Mys. 93.

> "The maintenace of Sadavartas, tanks, seats of learning and homes for the disabled or the destitute and similar institutions is recognised by and well known to Hindu Law, and when maintained as public institutions they must be taken to have a legal personality as a Matha or the deity in a temple has, and the persons in charge of the management would occupy a position of trust"

That decision proceeds on the basis that a tank can be a charitable institution under Hindu Law. That decision was quoted with approval by late Bijan Kumar Mukherjea who later became the Chief Justice of this Court in his Tagore Law Lectures delivered in August, 1951. Therein he observed:

> "It has been held that though mutts and temples are the most common forms of Hindu religious institutions, dedication for religious or charitable purposes need not necessarily take one of these forms and that the maintenance of Sadabartas, tanks, seats of learning and homes for the disabled or the destitutes and similar institutions are recognised by and well known to Hindu Law and when maintained as public institutions, they must be taken to have a legal personality as a Matha or the deity in a temple has, and the persons in charge of the management would occupy a position of trust"

From the above discussion it is seen that under Hindu Law a tank can be an object of charity and when a dedication is made in favour of a tank, the same is considered as a charitable institution It is not necessary for our present purpose to decide whether that institution can also be considered as a juristic person Once we come to the conclusion that the Inam with which we are concerned in this case was an Inam in favour of the "*uracheruvu*" (tank) that tank must be conidered as a charitable institution under the Act. Consequently after the abolition of the Inam, the Inam property gets itself converted into Royatwari property, of the "*uracheruvu*" to be managed by its manager. Admittedly the appellant is its present manager. Hence the property in question has to be registered in the name of the tank but it will continue to be managed by the appellant so long as he continues to be its manager.

In the result subject to our observations as regards the management of the property, the appeal is dismissed. No costs

V.K. *Order accordingly.*

THE SUPREME COURT OF INDIA.

(Civil Appellate Jurisdiction).

PRESENT —S. M. SIKRI AND K. S. HEGDE, JJ.

K. M. Viswanatha Pillai .. *Appellant**

v.

K. M. Shanmugham Pillai .. *Respondent.*

Motor Vehicles Act (IV of 1939), *as amended by Act* (C *of* 1956), *sections* 42 (1) *and* 60 (1) (c)—*Scope—Permit for plying transport vehicle—If could be obtained only by the owner of vehicle—Person owning buses* benami—*If can apply for permits*—(1966) 1 M L.J. 363, Reversed.

Section 42 (1) of the Motor Vehicles Act does not require that the owner himself should obtain the permit; it only requires that the transport vehicles shall not be used except in accordance with the conditions of the permit. The definition of 'permit' in section 2 (20) of the Act itself shows that all permits need not be in the name of the owner because the latter part of the definition shows that it is only in the case of a private carrier or public carrier that a permit has to be in the owner's name. The same inference follows from the definitions of 'private carrier' and 'public carrier' contained in the Act.

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* C A. No. 1453 of 1961. 25th November, 1968.

Varadarajulu Naidu v *Thavasi Nadar*, (1963) 2 M L J. 20, overruled

Nor does section 60 (1) (*c*) of the Act as amended by Act (C of 1956), envisage the grant of a permit to the owner alone.

Chavali Venkataswami v. *Chavali Kotayya*,, (1959) 2 An W.R 407, Overruled: *Khalil-ul-Rahman Khan* v *State*, A I R 1963 All 383, Approved.

In India *benami* transactions are recognised and not frowned upon. There is nothing in the Motor Vehicles Act which expressly or by implication bars *benami* transactions or persons owning buses *benami* and applying for permit on that basis.

Viswanathan Pillai v *Shanmugam Pillai*, (1966), 1 M L.J 363, Reversed.

Appeal from the Judgment and Decree dated the 14th September 1965 of the Madras High Court in Second Appeal No 1394 of 1963 *

A. K Sen, Senior Advocate (*R M Mehta*, Advocate and *J B. Dadachanji*, Advocate of *M/s. J B. Dadachanji & Co*, with him), for Appellant.

R. Gopalakrishnan, Advocate, for Respondent.

The Judgment of the Court was delivered by

Sikri, J—This appeal by certificate granted by the High Court of Madras is directed against its judgment and decree modifying the decree passed by the District Judge.

The relevant facts for the determination of the points raised before us are as follows· The plaintiff, K M Viswanatha Pillai, appellant before us and hereinafter referred to as the plaintiff, and K. M· Shammugham Pillai, respondent before us and hereinafter referred to as the defendant, were originally members of a joint Hindu family. On 29th June, 1953, the six brothers who constituted the joint Hindu family entered into a partition of the properties belonging to the joint Family, evidenced by a registered document Exhibit A-35. A motor-bus MDH 662 fell to the share of the plaintiff. At the time of partition the permit was not in the name of the defendant and some proceedings for the transfer of the permit to his name were pending. Accordingly it was provided in the partition deed as follows :

> " As soon as its route permit and registration etc. are transferred in the name of Shanmugham Pillai, he shall have the same transferred in the name of the 4th individual of us, Viswanatha Pillai "

In September 1953, the permit was transferred in the name of the defendant. In April 1954, the plaintiff purchased two more vehicles, namely, MDO 1106 and MDH 730, but the permits were obtained in the name of the defendant in whose name the vehicles were also actually acquired As the defendant was going to Kuala Lumpur on business he executed a general power-of-attorney, Exhibit A-55, in favour of the plaintiff. In this power-of-attorney the defendant admitted that the three buses above mentioned belonged to the plaintiff and were plying in his name as requested by the plaintiff. Two more buses seem to have been acquired since then.

The plaintiff's case in brief was that the defendant was carrying on business on his behalf as a *benamidar.* He accordingly prayed for a declaration that the five buses along with the stage carriage permits belonged to him and that he was entitled to run the same in terms of the power-of-attorney which was irrevocable The defendant had joined with the plaintiff earlier in filing a joint application for transfer of permits before the Regional Transport Authority. The defendant, however, withdrew his consent and the application was rejected The plaintiff, accordingly, seeks a mandatory injunction directing the defendant to execute necessary documents required to effectuate the transfer of the permits

The suit was decreed entirely by the trial Court, but the District Judge confirmed the decree only with reference to four of the buses. With reference to bus No MDU 4069 the decree was set aside.

*(1966) 1 M.L J 363.

The High Court held that "the plaintiff and the defendant practised a fraud upon the authorities, conjointly, in contravention of the express provision of the Motor Vehicles Act The *benamidar* of the vehicles, representing himself to be the owner, falsely obtained the permits in his name, and allowed the true owner, who had no permit, to conduct the actual business; there cannot be a more flagrant violation of the basic requirements of the Act, or of its scheme." The High Court, accordingly, felt that they could not possibly grant mandatory injunction compelling the defendant to co-operate in any further application for transfer, since that would, in effect, give recognition to the fraudulent contrivance and effectuate rights on the very basis of that contrivance. The High Court also agreed with the District Judge that the plaintiff could not get a declaration as far as bus No. MDU 4069, was concerned.

The learned Counsel for the appellant, Mr A. K. Sen urges before us that no provision of the Motor Vehicles Act, 1939 (IV of 1939) hereinafter referred to as the Act has been contravened and that it is not necessary under the Act that a permit should be obtained only by the real owner of the bus.

The relevant statutory provisions may now be noticed and they are as follows :

The Motor Vehicles Act, 1939.

Section 2.

(3) 'contract carriage' means a motor vehicle which carries a passenger or passengers for hire or reward under a contract expressed or implied for the use of the vehicle as a whole at or for a fixed or agreed rate or sum and from one point to another without stopping to pick up or set down along the line of route passengers not included in the contract, and includes a motor cab notwithstanding that the passengers may pay separate fares "

(19) "owner" means, where the person in possession of a motor vehicle is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire purchase agreement, the person in possession of the vehicle under that agreement.

(20) "permit" means the document issued by the Commission or a State or Regional Transport Authority authorising the use of a transport vehicle as a contract carriage, or stage carriage, or authorising the owner as a private carrier or public carrier to use such vehicle.

(22) "private carrier" means an owner of a transport vehicle other than a public carrier who uses that vehicle solely for the carriage of goods which are his property or the carriage of which is necessary for the purposes of his business not being a business of providing transport, or who uses the vehicle for any of the purposes specified in sub-section (2) of section 42.

(23) "public carrier" means an owner of a transport vehicle who transports or undertakes to transport goods, or any class of goods, for another person at any time and in any public place for hire or reward, whether in pursuance of the terms of a contract or agreement or otherwise, and includes any person, body, association or company engaged in the business of carrying the goods of persons associated with that person, body, association or company for the purposes of having their goods transported "

Section 42 (1) on which the High Court has relied reads thus :

"42 (1) No owner of a transport vehicle shall use or permit the use of the vehicle in any public place, save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or the Commission authorising the use of the vehicle in that place in the manner in which the vehicle is being used.. .... "

This section does not, in our view, on the language require that the owner himself should obtain the permit, it only requires that the transport vehicle shall not be used except in accordance with the conditions of the permit. The

High Court would add the words " to him " after the words " permit granted," but, in our view, there is no justification for inserting those words. The definition of the " permit " itself shows that all permits need not be in the name of the owner because the latter part of the definition shows that it is only in the case of a private carrier or a public carrier that a permit has to be in the owner's name. The same inference follows from the definitions of " private carrier " and "public carrier." This Court came to the same conclusion in *Veerappa Pillai* v. *Raman and Raman*[1]

Some reliance was placed on the amendments made in section 60 (1) (*c*). The section as amended reads

> " 60 (1) The Transport Authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit.—
>
> (*c*) if the holder of the permit ceases to (*own*)[2], the vehicle or vehicles covered by the permit "

There has been a conflict of opinion between the different High Courts as to the inference following that amendment. It seesms to us that the High Court of Allahabad in *Khalil-ul-Rahman Khan* v. *State Transport Appellate Tribunal*[3], rightly gives the effect of the amendment. Srivastava, J., observed.

> " A reference was, however, made to clause (*c*) of sub-section (1) of section 60 of the Act and on the basis of that clause it was urged that it assumed that the permit holder should be the owner of the vehicle. That clause provides for one of the contingencies in which a permit can be cancelled. According to it it is permissible for the Transport Authority to cancel a permit, if the holder of it ceases to own the vehicle covered by the permit. It is only a permissive clause and the Transport Authority has only been given a discretion to cancel the permit in that contingency. It may or may not cancel it, even if the holder of the permit ceases to own the vehicle covered by it But it is by no means necessary that clause (*c*) should be applicable to the case of every permit holder. There may be permit holders who own the vehicle covered by the permit and there may be permit holders who do not own the vehicle. This clause appears to apply only to the former case and not to the latter. On its basis, therefore, it cannot be held to be a requirement of the Act that in each case the person in whose favour a permit has been issued should necessarily be the owner of the vehicle covered by it "

We agree with these observations The contrary view held in *Varadarajulu Naidu* v *Thavasi Nadar*[4], that section 42 (1) contemplates that only an owner will have a permit is erroneous.

The decision of the Andhra High Court in *Chavali Venkataswami* v *Chavali Kotayya*[5], that section 60 (1) (*c*) of the Act envisages the grant of a permit to the owner alone must also be dissented from.

The learned Counsel for the respondent says that at any rate the Act does not contemplate persons applying for permits *benami* In India *benami* transactions are recognised and not frowned upon (see *Gur Narayan* v. *Sheolal Singh*[6]. In *C.I T., Gujarat* v. *Abdul Rahim & Co.*[7], it was held by this Court that the registration of the partnership deed under section 26-A of the Indian Income Tax Act, 1922, could not be refused on the ground that *K* was the *benamidar* of *V*.

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1 (1952) S C J 261 (1952) 1 M L J 806 (1952) S C R 583

2 Substituted by section 54 of the Motor Vehicles (Amendment) Act, 1956 (C of 1956) for " possess" (with effect from 16-2-1957).

3. A I R. 1963 All 383, 388

4 (1963) 2 M L J 20

5 (1959) 2 An W R 407

6 I L R (1919) 46 Cal 566 . L.R 46 I A 1 36 M L J 68 (P C).

7 (1965) 1 S C J. 434 (1965) 1 I T J 462 (1965) 2 S.C R 13

W see nothing in the Act which expressly or by implication bars *benami* transactieons or persons owning buses*benami* and applying for permits on that basis.

In the result the appeal is allowed, the decree of the High Court set aside and the decree passed by the District Judge restored We may mention that Mr Sen did not press the claim regarding the fifth bus, MDU 4069 The appellant will have half costs in this Court The parties will bear their own costs in the High Court.

V K - *Appeal allowed*

THE SUPREME COURT OF INDIA.

(Civil Appellate Jurisdiction.)

PRESENT —S M SIKRI, R. S BACHAWAT AND K S HEGDE, JJ.

V Sanjeevaraya Mudaliar . *Appellant**

v

N. A. Raghavachari *Respondent.*

Madras City Tenants Protection Act, 1921 (*III of* 1922), *sections* 2 (1) *and* 2 (2)—*Tenant of a vacant site in the backyard of a residential house, not a tenant of a building under section* 2 (1)—*Tenant, if a tenant under section* 2 (1).

Madras City Tenants Protection Act, 1921 (*III of* 1922), *sections* 3, 9 *and proviso to section* 12—*Interpretation—Stipulation in the registered lease forbidding the erection of building by the tenant—Tenant erecting permanent structures on the land—Tenant, if entitled to compensation under section* 3 *and to the benefits of section* 9

The following two questions arose for determination in this appeal (1) is the tenant of a vacant site in the backyard of a residential house a tenant of land within the purview of the Madras City Tenants' Protection Act, 1921 ? (2) Having regard to the proviso to section 12 is such a tenant entitled to the protection of sections 3 and 9 of the Act in a case where he has erected buildings on the land in contravention of an express stipulation in a registered lease ?

It may be conceded that if the respondent had let the residential building together with its appurtenant land, the tenancy would not be a tenancy of land within the purview of the Act But the respondent did not let the building with the land appurtenant thereto He retained the building and let the land separately The letting was of land and nothing else The appellant is not a tenant of a building as defined in section 2 (1) either before or after its amendment by Madras Act XIII of 1960 He is a tenant of land as defined in section 2 (2) In the present case a registered lease contains a stipulation by the tenant that he would not build any permanent structure on the land so as to entitle him to claim in future the value thereof The point in issue is whether this is a stipulation as to the erection of building within the proviso of section 12 This stipulation is clearly one as to the erection of buildings In common parlance a stipulation forbidding erection of building is understood to be one in respect of the erection of building. The popular meaning furnishes the key to the interpretation of the proviso to section 12. If a stipulation concerning the size and nature of the building to be erected on the land is one as to the erection of buildings, *a fortiori* a stipulation forbidding the erection of buildings of a particular kind altogether is one as to the erection of buildings within the proviso to section 12.

In contravention of the stipulation, as to the erection of buildings, in the registered lease deed the appellant erected permanent structures on the land after the date of the lease. The question is whether the appellant is entitled to compensation to the structures under section 3 and to the benefits of section 9 If the tenant erects a permanent structure in contravention of the stipulation he is not entitled to any compensation under section 3 As he is not entitled to any compensation under section 3 he cannot claim the benefit of section 9.

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*C. A. No. 776 of 1966. 19th September, 1968.

Appeal by Special Leave from the Judgment and Order dated the 26th April, 1965 of the Madras High Court in A A O. No 1 of 1962.

S. C. Manchanda, Senior Advocate (*T A. Ramachandran*, Advocate, with him), for Appellant.

B Sen, Senior Advocate (*M Srinivasan* and *R. Thiagarajan*, Advocates, with him), for Respondent.

The Judgment of the Court was delivered by

Bachawat, J.—The respondent is the owner of premises No 8, Brahmin Street, Saidapet, Madras. By a registered lease dated 21st November, 1952 he let to the appellant the backyard of the premises for a term of 5 years The backyard consisted of vacant land. The lease deed authorised the appellant to use land for boiling and drying paddy, to use the gate in the western compound wall for ingress and egress, to erect an opening in the wall for bringing in and taking out the paddy, and to erect a temporary shed for keeping the paddy on condition that while vacating the land he would dismantle the same. The deed specifically provided that the appellant " should not erect any kind of permanent super-structures on the said vacant site so as to entitle him to claim in future the value thereof," except such facilities as were necessary for drying paddy at his own expense. In contravention of this stipulation and without any authority from the respondent, the appellant erected permanent super-structures on the land On the expiry of the lease the appellant refused to vacate the land On 12th March, 1959 the respondent filed a suit for his eviction The appellant claimed protection under the Madras City Tenants Protection Act, 1921 (III of 1922). Before filing his written statement on 15th February, 1960, he filed an application under section 9 of the Act asking for an order that the respondent be directed to sell the land for a price to be fixed by the Court. The trial Court decreed the suit on 25th August, 1960 The first appellate Court reversed the decree and dismissed the suit The High Court on second appeal restored the decree of the trial Court. The present appeal has been filed after obtaining Special Leave.

The Courts below concurrently found that the appellant had constructed permanent super-structures on the vacant land after 21st November, 1952 without any authority from the respondent and in contravention of the stipulation in the registered lease. This finding is not challenged before us In view of the fact that the construction was in contravention of the stipulation in the lease, the trial Court and the High Court held that the appellant was not entitled to the protection of section 9 of the Act; but the first appellate Court held that the appellant was nevertheless entitled to such protection The trial Court and the High Court held that the vacant site in the backyard being appurtenant to a house was building and not land, and the appellant not being a tenant of land was not protected by the Act, but the first appellate Court held that the vacant site was land and the tenancy, was within the purview of the Act. The appellant challenges the findings of the High Court on both points. The following two questions arise for determination in this appeal. (1) Is the tenant of a vacant site in the backyard of a residential house a tenant of land within the purview of the Madras City Tenants' Protection Act, 1921 ? (2) Having regard to the proviso to section 12 is such a tenant entitled to the protection of sections 3 and 9 of the Act in a case where he has erected buildings on the land in contravention of an express stipulation in a registered lease ?

To appreciate the points arising in this case it is necessary to refer to the relevant provisions of the Madras City Tenants Protection Act, 1921. The Act was passed with a view to give protection to tenants who in certain areas had constructed buildings on others' lands in the hope that they would not be evicted so long as they paid fair rent for the land The Act was amended from time to time. It extends to the city of Madras and other notified areas and applies only to tenancies of land created before certain specified dates (section 1) It is common case before us that the Act extends to the area where the disputed land is situated Section 2 is the definition section. " Building " is defined in section 2 (1) to include any building,

hut or other structure whether of masonry, bricks, wood, metal or any other material whatsoever used (i) for residential or non-residential purposes in certain specified areas and (ii) for residential purposes only, in any other area and includes the appurtenances thereto. It may be mentioned that "building" was not defined to include the appurtenances thereto in any area under section 2 (1) before its amendment on 27th July, 1960 by Madras Act III of 1960. "Land" does not include buildings [section 2 (4)]. "Landlord" means any person owning any land, [section 2 (3)]. "Tenant" in relation to any land means a person liable to pay rent in respect of such land under a tenancy express or implied and includes any such person who continues in possession of the land after the determination of the tenancy agreement. [section 2 (2)] Section 3 provides that every tenant shall on ejectment be entitled to be paid as compensation the value of any building, which may have been erected by him and for which compensation has not already been paid. Section 9 (1) provides that a tenant who is entitled to compensation under section 3 and against whom a suit in ejectment has been instituted may within the prescribed time apply to the Court for an order that the landlord should be directed to sell the whole or part of the land for a price to be fixed by the Court Section 10 provides that section 9 shall apply to suits in ejectment which are pending before certain specified dates. Section 11 requires 3 months notice in writing before the institution of a suit in ejectment against a tenant. Section 12 provides that

> "nothing in any contract made by a tenant shall take away or limit his rights under this Act, provided that nothing herein contained shall affect any stipulations made by the tenant in writing registered as to the erection of buildings, in so far as they relate to buildings erected after the date of the contract."

Section 13 provides that in its application to the city of Madras and to other notified areas the Transfer of Property Act shall to the extent necessary to give effect to the provisions of the Act be deemed to have been repealed or modified.

The first question is whether the appellant is a tenant of land as contemplated by the Madras City Tenants Protection Act, 1921 Before the execution of the lease deed dated 21st November, 1952 the land in the backyard was occupied with and was appurtenant to the residential house at No 8, Brahmin Street. It may be conceded that if the respondent had let the residential building together with its appurtenant land, the tenancy would not be a tenancy of land within the purview of the Act. But the respondent did not let the building with the land appurtenant thereto. He retained the building and let the land separately. The letting was of land and nothing else The appellant is not a tenant of a building as defined in section 2 (1) either before or after its amendment by Madras Act XIII of 1960. He is a tenant of land as defined in section 2 (2). The High Court was in error in holding that he was a tenant of building.

The next question is whether having regard to the proviso to section 12, the appellant is entitled to the benefits of sections 3 and 9 in view of the fact that he constructed buildings in contravention of the express stipulation in the registered lease. Under section 3 a tenant on ejectment is entitled to be paid as compensation the value of any building erected by him A tenant entitled to compensation under section 3 and against whom a suit for ejectment has been instituted is entitled to purchase the whole or part of the land by invoking the procedure under section 9. The effect of the main part of section 12 is that nothing in any contract made by a tenant takes away or limits his rights under sections 3 and 9 The proviso to section 12 saves stipulations as to the erection of buildings made by a tenant in a registered writing. But a stipulation as to the erection of buildings made orally or in an unregistered writing is not protected by the proviso and a tenant erecting a building in breach of the covenant is entitled to the benefits of sections 3 and 9. In *R V. Naidu* v *Naraindas*[1], a piece of vacant land was let under an unregistered instrument

1, (1965) 2 S.C.J. 880 : (1966) 1 M.L.J. (S.C.) 1 : (1966) 1 An.W.R. (S.C.) 1 ; (1966) 1 S.C.R. 110.

of lease which provided that the tenants would not raise any building in the vacant site. The tenants erected a building on the land in breach of the covenant. This Court held reversing the decision of the High Court in *Naraindas* v. *Naidu*[1], that the tenants against whom a suit for ejectment had been instituted was entitled to the benefits of sections 3 and 9. The Court pointed out that as the covenant not to build was contained in an unregistered lease, the proviso to section 12 had no application and the landlord could not rely on the covenant.

In the present case a registered lease contains a stipulation by the tenant that he would not build any permanent structure on the land so as to entitle him to claim in future the value thereof. The point in issue is whether this is a stipulation as to the erection of building within the proviso to section 12. In *Vajrapuri* v. *New Theatres Carnatic Talkies Ltd.*[2], the tenants obtained a lease of land for constructing a building suitable for use as a theatre. The registered lease deed provided that on the expiry of the lease the tenants would surrender possession of the land after dismantling and removing the building constructed by him. The Madras High Court held that this stipulation was not one as to the erection of buildings and was not protected by the proviso to section 12 and that the tenants against whom a suit for ejectment had been instituted could claim the protection of sections 3 and 9. Ganapatia Pillai, J., observed.

> " In our opinion, the application of the Proviso should be limited to those cases where the stipulations in the contract relate to erection of the building, such as the size of the building, the cost of the building and the design of the building or other cognate matters."

He added :—

> "We are not concerned herewith a case of erection of buildings contrary to the stipulations contained in the written contract, to which the tenant was a party. How far, in such a case, the tenant would be protected from foregoing his rights under the impugned Act does not arise for our consideration. .. ."

This decision was affirmed by this Court by a majority decision in *Vajrapani Naidu* v. *New Theatres Carnatic Talkies*[3], Shah, J., speaking for the majority said at pages 1022-23:

> " A covenant in a lease which is duly registered that the tenant shall on expiry of the lease remove the building constructed by him and deliver vacant possession, is undoubtedly a stipulation relating to the building, but it is not a stipulation as to the erection of building. Having regard to the object of the Act, and the language used by the legislature, the exception must be strictly construed, and a stipulation as to the erection of buildings would not, according to the ordinary meaning of the words used, encompass a stipulation to vacate and deliver possession of the land on the expiry of the lease without claiming to enforce the statutory rights conferred upon the tenant by section 9. The stipulations not protected in section 12 are only those in writing registered and relate to erection of buildings such as restrictions about the size and nature of the building constructed, the building materials to be used therein and the purpose for which the building is to be utilised."

The minority was of the opinion that the stipulation was protected by the proviso to section 12. Ayyangar, J., speaking for the minority said at page 1032:

> " If a stipulation forbidding erection of buildings and requiring their removal before surrendering possession of the site is conceded to be one in respect of erection of buildings—as has to be conceded—it is not possible to accept the construction that a stipulation for the removal of buildings which the lessee is permitted to erect and keep in the site only for the duration of the tenancy is any the less one in respect of erection of buildings."

1. (1963) 1 M.L.J. 140 : I.L.R. (1963) Mad. 649.
2. I.L.R. (1959) Mad. 997: (1959) 2 M.L.J. 469, 477-8.
3. (1964) 6 S.C.R. 1015: (1965) 1 M.L.J. (S.C.) 47: (1965) 1 An.W.R. (S.C.) 47 : (1965) 1 S.C.J. 388.

Having regard to this decision it must be held that a stipulation for giving vacant possession of the land after demolition of the building which the tenant has been authorised to construct thereon is not one as to the erection of buildings with the proviso to section 12. In the present case the rgistered lease deed authorised the appellant to erect a temporary shed on condition that while vacating the land he would dismantle the same The stipulation for vacating the land after dismantling the temporary shed is not protected by the proviso to section 12 Had the appellant constructed a temporary shed he could inspite of the stipulation claim the protection of sections 3 and 9 The registered lease deed also contained an express stipulation that the appellant would not erect permanent structures of any kind on the land so as to entitle him to claim in future the value thereof This stipulation is clearly one as to the erection of buildings In common parlance a stipulation forbidding erection of building is understood to be one in respect of the erection of building. The popular meaning furnishes the key to the interpretation of the proviso to section 12. If a stipulation concerning the size and nature of the building to be erected on the land is one as to the erection of buildings, *a fortiori* is stipulation forbidding the erection of buildings of a particular kind altogether a one as to the erection of buildings within the proviso to section 12

In contravention of the stipulation, as to the erection of buildings, in the registered lease deed the appellant erected permanent structures on the land after the date of the lease The question is whether the appellant is entitled to compensation for the structures under section 3 and to the benefits of section 9 The effect of the proviso to section 12 is that nothing in the Act affects the stipulation Sections 3 and 9 are subject to and controlled by the proviso to section 12 Section 3 provides that a tenant shall on ejectment be entitled to be paid as compensation the value of any building erected by him. The right conferred on the tenant by section 3 is controlled by the stipulation in the registered lease deed that he shall not erect permanent structures of any kind on the land so as to entitle him to claim in future the value thereof The stipulation overrides the tenant's rights under section 3 If the tenant erects a permanent structure in contravention of the stipulation he is not entitled to any compensation under section 3 As he is not entitled to any compensation under section 3, he cannot claim the benefit of section 9 The High Court rightly held that the appellant was not entitled to the protection of section 9.

In the result, the appeal is dismissed with costs.

V.M.K. *Appeal dismissed.*

[END OF VOLUME (1969) 1 M L. J (S. C)]